



# The Override

Every Landman Wants One!

Volume VII, Issue II

March, 2012



## Los Angeles Association of Professional Landmen

### Presidents Message

**Joe Munsey, RPL**

**Southern California Gas Company**

Greetings from your chapter president, I trust all is going well since we turned over a new year just a mere 10 weeks ago – time in motion; moving at the pace of 24 hours a day. Although it seems quick, in light of deadlines that must be met to satisfy upper management or the “client,” those 10 weeks can seem long and drawn out.

A year ago in this column, our chapter president at the time, Stephen Harris, CPL, penned an article discussing one of the worst oil spills in this country’s history had recently taken place. Yet, in light of that event, the distinguished speaker at the joint session with the Los Angeles Basin Geological Society in January, Dr. “Rusty” Riese, informed those in attendance that all is now well in the Gulf, to the consternation of purveyors of ecological doom, who have been proven wrong – once again. We all went away with a different perspective at what was supposed to have taken place, doomsayer’s predilection use of scare tactics, to what

has actually occurred in the aftermath. Let’s bring back all the rigs which have been scattered hither and abroad and begin drilling like mad men once again in the oil and gas laden Gulf.

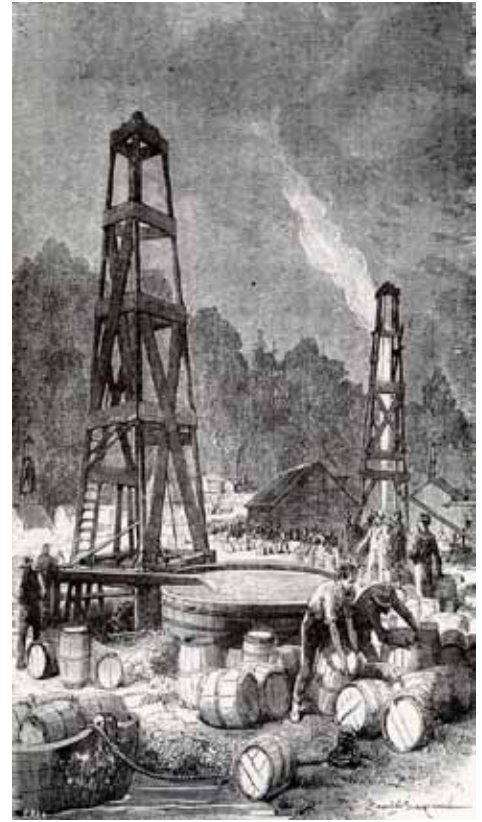
Yet again we have a trumped up crises brewing here in the United States; “fracing,” or fracking as the lay people have come to spell the term, has taken the place of the Horizon headline grabber. Nevertheless, there is faith the industry will once again come on top as they learn to appease the regulators and keep the drill bits turning to the right; if not by virtue there is just too many highly paid jobs at stake, tax revenues to state and local governments; last but not least, big fat royalty checks to mineral owners who spend the new found money and spread it around the community. “Come drill a well in my back yard” is slowly drowning out the doomsayers.

Before deals can be made between warring oil companies; beforehand these competitors had slipped in and seized leases from the “unsuspecting” out from under each other, a couple of land professionals have the joy of sitting across from each other and working on the infamous AAPL Joint Operating Agreement. It is time to make peace and work out the details as to whom pays what, who gets what; and of course who does what.

We have invited a couple of legal professionals, members of the LAAPL, to shed some light on what is not covered in the AAPL Joint Operating Agreement. Messrs. Harris and Guadiana of the Law Firm of Meyers Nave will be our luncheon speakers to expound on these matters.

We plan to get our speakers on the floor early as we expect a full 50 minutes

*Presidents Message continued on page 3*



### Meeting Luncheon Speakers

#### “What Isn’t Covered by the AAPL Joint Operating Agreement”



**John Harris, Esq.**, chairs Meyers Nave's Oil, Gas and Energy Practice Group and brings over 30 years of experience to the firm, representing operators, working interest owners, mineral and land owners, public agencies, and industrial clients on oil and gas, energy, and environmental matters.



**Ernest Guadiana, Esq.**, represents private entities and local agencies in litigation and compliance matters regarding oil and gas disputes and negotiations, water quality, water rights, and environmental contamination. He came to Meyers Nave in 2010 after practicing litigation in Connecticut and New York.

### Inside This Issue:

~ Click on a topic to take you to that article ~

Presidents Message	1
Luncheon Speaker	1
Opinionated Corner	2
Lawyer’s Joke of the Month; Treasury Report	4
Scheduled Luncheon Topics	4
New Members and Transfers; Honorable Guests	4
Chapter Board Meeting	4
LAAPL Officer Candidates	5
Educational Corner	8
Case of the Month - Right of Way	12
Special Article - Southern California Gas Company	16
LAAPL Legislative Affairs Update	18
Case of the Month - Oil & Gas	19



## Opinionated Corner

**Stephen Harris, CPL  
Independent**

“As a country that has 2% of the world’s oil reserves but uses 20% of the world’s oil, we’re not going to be able to just drill our way out of the problem of high gas prices,” Obama said. “Anybody who tells you otherwise either doesn’t know what they are talking about or they aren’t telling you the truth.” *Los Angeles Times - President Obama, Mitt Romney Spar Over Gas Prices, March 8, 2012.*

That is quite a statement, and shows political and perfidious manipulation of facts, fatuous ignorance, reality shape-shifting or, he is channeling the late Davy Jones’ spirit from the song lyrics in “Daydream Believer.” If the latter is what he did with that inane and Orwellian statement, then I suggest another Monkees song, “Look Out (Here Comes Tomorrow).”

I trust by now you get my drift as to where I am going in this missive. Let’s see if this picture below makes my point:

Now, please let me indulge in a mini catch-up to reality which was omitted from the desultory quote from the President above.



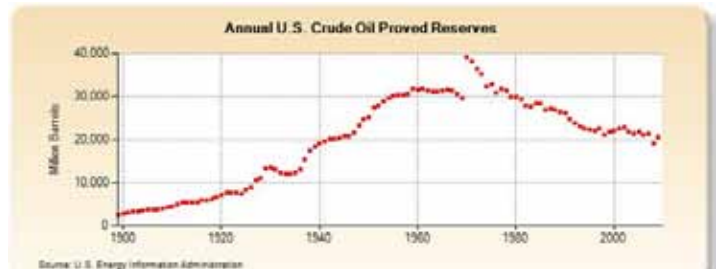
The early edition of the Annual Energy Outlook from the EIA indicates the United States is expecting a dramatic change in energy self-sufficiency with oil imports halving in the next 20-odd years. “Imported liquid fuels as a share of total U.S. fuel reached 60 percent in 2005 and 2006 before falling to 50% in 2010.” The Agency forecasts that the decline will continue, with the level of imports dropping to 36% by 2035. The EIA said that by 2035, the “net import share of

total U.S. energy consumption should be 13 percent.” That will be an enormous change in the U.S.: at 13%, its virtual self sufficiency for the U.S. and with much of the imports coming from Canada, Mexico and the Western Hemisphere,



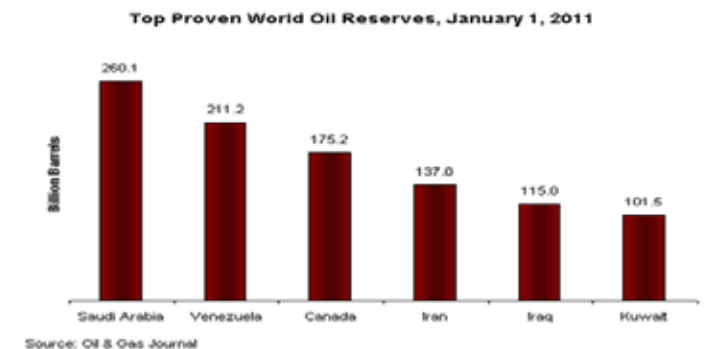
it has considerable strategic interest as well.

As to crude production in the U.S., the EIA states “U.S. crude production increased from 5.1 million barrels per day in 2007 to 5.5 million barrels per day in 2010. Over the next 10 years, continued development of tight oil, in combination with the ongoing development of offshore resources in the Gulf of Mexico, pushes domestic crude oil production in the reference case to 6.7 million barrels of oil per day in 2020, a



level seen not since 1994.”

Global oil reserves rose to a record 1.38 trillion barrels in 2010 as technological advances unlocked production from once impenetrable shale formations and deep-water reserves, according to BP Plc. In the U.S., the amount of gas produced and sold in 2010 rose to the highest in 37 years, according to the U.S. Energy Department.



Now, let’s get to the “Oil Reserve Fallacy:” Proven reserves are not a measure of future supply.

Currently, North America has estimated 55 billion barrels (total world is 1,017 billion barrels equivalent) and 398 billion

Editor's Corner  
continued from page 2

barrels of technically recoverable oil and gas reserves (the world has 2.275 trillion barrels of technically recoverable oil) according to the USGS and US Dept of Energy.

President Obama does not want to discuss the 1.2 trillion barrels of estimated oil reserves from the Canadian Athabasca Tar Sands.

The President does not want to mention what Charles Masters of the USGS said: *“Unconventional resources, such as extra heavy oils, tar sands, gas in tight sands, coal bed methane, which were not considered in earlier USGS assessments, but they must, nonetheless, be recognized as present in very large quantities.....The two major sources of unconventional oil ....are the extra heavy oil in the Orinoco province of Venezuela and the tar sands in the Western Canadian Basin. Taken together, these resource occurrences in the Western Hemisphere are approximately equal to the Identified Reserves of conventional crude oil accredited to the Middle East.”*

Daniel Yergin, author of “The Prize” – Yergin’s history of the oil industry, noted that recently all of the major Persian Gulf countries increased their proven reserves by more than 50% with a stroke of a pen. I think that the phrase “just happened” is a true stretch. It seems that Yergin is merely justifying what geologists have known all along. It raises the basic question; is the Middle East such an enormous “prize” all along, or just one we happen to invest in?

Looking at the reserves noted above, why would President Obama and his cognoscente not want to mention a few game-changers like: The entire shale interval in the Piceance Basin in Colorado has an estimated 1.07 trillion barrels of oil reserves (USGS 2008); the Green River Formation assessed by the USGS in 2011 of 1.44 trillion in-place oil reserves; a 2010 USGS assessment

of the Uinta Basin in eastern Utah and western Colorado in-place reserves of 1.53 trillion barrels; or the 2012 Fact Sheet as to recoverable oil and gas resources in the Alaskan North Slope at 2 billion barrels and 80 trillion cubic feet of gas; or the new Bakken report still in the works which will be substantially revising the 2008 recoverable reserves of 3.8 billion barrels of oil.

Why do folks who have a hand in the U.S. energy policy not speak out when the President says the U.S. consumes 25% of the global oil production with only 2% of the world’s oil reserves and put the correct context on those numbers?

They do not mention the U.S. is the world’s largest single nation economy and accounts for 25% of the gross national product worldwide. Another inconvenient fact is that while the U.S. has only 5% of the world’s population, it does indeed consume 20% of the entire world’s energy.

I believe that is what government sycophants refer to as something to do with our unusually high standard of living.

“I heard he was up on the roof last night. Signaling with a flashlight.

And what’s that tune he’s Always whistling....

What’s he building in there?

What’s he building in there?

We have a right to know...”

*Tom Waits from “Mule Variations, 1999.”*



**Randall Taylor, RPL  
Petroleum Landman**

Taylor Land Service, Inc.  
30101 Town Center Drive  
Suite 200  
Laguna Niguel, CA 92677  
949-495-4372  
randall@taylorlandservice.com

President's Message  
continued from page 1

this presentation, which will qualify for AAPL Continuous Educational credit. Plan to arrive early and hit the wonderful Long Beach Petroleum Club’s buffet once you have exchanged pleasantries with fellow members and guests

We are pleased to announce an appointment of co-chairs for our Legislative Affairs Chair, Messrs. Valverde and Flores of the Law Firm of Luna and Glushon. Peruse Mr. Valverde’s debut column on what is happening within the State Legislatures as it affects the industry here in California.

The LAAPL’s Nomination Committee has been busy putting forth a slate of officers for the 2012 – 2013 term; elections for chapter offices takes place at our May luncheon.

See you at the luncheon.

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## Chapter Board Meetings

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**Adrienne Wiggins  
Petroland Services  
Chapter Secretary**

The LAAPL Board of Directors and Committee Chairs held its board meeting at the Willow Street Convention Center immediately following the joint meeting with the Los Angeles Basin Geological Society. The matters discussed at the January board meeting are as follows:

- Officer Nominations
- LAAPL Annual Mickelson Golf Classic
- LAAPL to discuss WCLI
- Call for membership dues
- Other matters

The LAAPL Board of Directors and Committee Chairs hold its Board Meeting at the Long Beach Petroleum Club immediately following the chapter meeting. We encourage members to attend and see your Board of Directors and Committee Chairs in action.

## 2011–2012 Officers & Board of Directors

Joe Munsey, RPL  
President  
Southern California Gas Company  
714-634-3143

Stephen Harris, CPL  
Past President  
Independent  
213-999-7344

L. Rae Connet, Esq.  
Vice President  
PetroLand Services  
310-349-0051

Adrienne Wiggins  
Secretary  
PetroLand Services  
310-349-0051

Sarah Downs  
Treasurer  
Independent  
562-639-9433

Randall Taylor, RPL  
Director  
Taylor Land Services, Inc.  
949-495-4372

Thomas G. Dahlgren  
Director  
Warren E & P  
562-590-0909 Ext. 204

Randall Taylor, RPL  
Region VIII AAPL Director  
Taylor Land Service, Inc.  
949-495-4372

Newsletter/Publishing Chair  
Joe Munsey, RPL, Co-Chair  
Randall Taylor, RPL, Co-Chair

Communications/Website Chair  
Odysseus Chairtakis  
PetroLand Services  
310-349-0051

Membership Chair  
Jason Downs  
Downchez Energy, Inc.  
858-699-3353

Education Chair  
Jason Downs  
Downchez Energy, Inc.  
858-699-3353

Golf Chair  
Terry Allred, RPL  
Zodiac Energy  
661-873-4662

Legislative Chair  
Olman Valverde, Esq., Co-Chair  
Mike Flores, Co-Chair  
Luna & Glushon  
310-556-0444



## Lawyers' Joke of the Month

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

DEAR ABBY:

I have always wanted to have my family history traced, but I can't afford to spend a lot of money to do it. Any suggestions?

Sam in California.

DEAR SAM:

Run for public office.

Abby

## Scheduled LAAPL Luncheon Topics and Dates

### March 15th

John J. Harris, Esq. &  
Ernest L Guadiana, Esq. of Meyers  
Nave

*"What Isn't Covered by the AAPL  
Joint Operating Agreement"*

### May 17th

Paul Cowdery, Parcel Quest

*"Assessing Minerals"*

Officer Elections

### September 20th

Cody Lee, Westward Energy

*"The Shale Play Revolution"*

## Our Honorable Guests

January's luncheon was a successful joint meeting with the LABSG and LAAPL Chapters held at the Grand at Willow Street Conference Center.

LAAPL's guests of honor who attended:

Brandon Horner, Independent

John Belleggie, Independent



## Treasurer's Report

As of 1/1/2012, the LAAPL account showed a balance of	\$19,323.43
Deposits	\$80.00
Total Checks, Withdrawals, Transfers	\$8,417.66
<b>Balance as of 1/1/2012</b>	<b>\$10,985.77</b>
Merrill Lynch Money Account shows a total	\$11,096.90

## New Members and Transfers

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

### New Member Request

Wayne A. Bissett  
P.O. Box 2101  
Midland, TX 79702  
Business Phone: (432) 685-3296  
Mobile: (432) 559-0220  
bissett@geospectrum.com

### Transfers

from  
Terry L. Allred, RPL  
Land Manager  
Zodiac Energy LLC  
901 Tower Way, Suite 306  
Bakersfield, California  
to  
Terry L. Allred, RPL  
Land Manager  
The Termo Company  
3275 Cherry Avenue  
Long Beach, California 90807  
TerryA@termoco.com  
Office: 562.595.7401 Ext. 257  
Cell: 310-780-6742  
www.termoco.com



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## LAAPL Candidates For 2012 - 2013 Officers

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The LAAPL's Board of Directors duly appointed Stephen T. Harris, CPL, Independent, and Thomas G. Dahlgren, Manager of Land, Warren E & P Inc., as Co-chairs of the Nomination Committee to seek out qualified candidates for officers. The officers will serve from July 1st, 2012 – June 30th, 2013. All qualified members interested in submitting their names as candidates are encouraged to contact the committee co-chairs:

Thomas G. Dahlgren @ 562-590-0909 Ext. 204, email: tdahlgren@warrenresources.com

Stephen T. Harris, CPL @ (213) 999-7344, email: oil.gas@gte.net

Per Section 7 (7a) of the By-laws, the membership will be provided with a list of nominees for officers for Vice President, Secretary, Treasurer and two (2) Directors at the March meeting. Further nominations from the floor will also be accepted at the March meeting. Members whose names are placed in nomination must give prior consent to be nominated and by mail or email up to May 1, 2012. The election will take place at the last regular meeting of the Association this fiscal year, which is scheduled for May 17, 2012.

Thomas G. Dahlgren and Stephen T. Harris, CPL, have received, or discussed with members, those qualified candidates set forth below.

President <sup>1</sup>	L. Rae Connet, Esq., Managing Partner, PetroLand Services
Director <sup>2</sup>	Joseph D. Munsey, RPL, Senior Land Advisor, Southern California Gas Company

OFFICE		CANDIDATE
Vice President	<input type="checkbox"/>	Paul Langland, Esq., Independent
	<input type="checkbox"/>	Thomas G. Dahlgren, Warren E&P Inc.
Secretary	<input type="checkbox"/>	Adrienne Wiggins, Petroland Service
	<input type="checkbox"/>	
Treasurer	<input type="checkbox"/>	Sarah Downs, Downchez Energy, LLC
	<input type="checkbox"/>	Cynthia Reed, Warren E&P, Inc.
Director	<input type="checkbox"/>	Stephen T. Harris, CPL, Independent
	<input type="checkbox"/>	
Director	<input type="checkbox"/>	Thomas G. Dahlgren, Warren E&P, Inc.
	<input type="checkbox"/>	
2012-2014 Region VIII AAPL Director <sup>3</sup>	<input type="checkbox"/>	Randall Taylor, RPL, Taylor Land Service
	<input type="checkbox"/>	

<sup>1</sup>Per Section 7(3) the Vice President shall succeed to the office of the President after serving his or her term as Vice President and shall hold the office of President for the next twelve (12) months.

<sup>2</sup>Per Article 8 (2) the outgoing President shall serve as director.

<sup>3</sup>Not an elected position and not a member of the LAAPL Board – by Board appointment for a two year period.

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## Chapter President Appoints Legislative Affairs Chair

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Our Chapter President recently appointed the following members as Co-Chairs:

Legislative Affairs Chair:

Olman Valverde, Esq.,  
Luna Glushon, Co-chair  
ovalverde@lunaglushon.com

Mike Flores, Legislative Analyst,  
Luna Glushon, Co-chair  
mflores@lunaglushon.com

1801 Century Park  
Los Angeles, CA  
Business Phone: (310) 556-1444

Please offer your congratulation to these gentlemen for taking on the duties of this newly appointed Chair for the LAAPL.

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## Mickelson Golf Classic Coming Soon

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**Terry Allred, RPL**  
**The Termo Company**  
**Michelson Golf Classic Chair**



### MALIBU

Ocean breezes and cool sunny days! Don't forget to mark your calendar for the LAAPL Mickelson Charity Golf Classic at the Malibu Golf Club on August 10th. THE BEST Landman's Golf Tournament in California. Located conveniently between Los Angeles and Bakersfield, California. Registration materials available soon.

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## The Termo Company Announces Addition To It's Management Team

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**Jason Downs**  
**Downchez Energy, Inc.**  
**Membership Chair**

After 15 years at Transamerica Minerals Company and this past year commuting from Torrance, California, to Zodiac Exploration in Bakersfield, California, **Terry L. Allred, RPL**, a land professional veteran of the California oil patch, recently announced his acceptance of the position as Land Manager with The Termo Company in Long Beach. Termo is a privately held E&P company that has been in business for 80 years at the same Long Beach address. Termo is seeking drilling and acquisition deals (operated and non-op) in any producing basin in the USA. Terry's new contact information is:

**Terry L. Allred, RPL**  
Land Manager  
The Termo Company  
3275 Cherry Avenue  
Long Beach, California 90807  
TerryA@termoco.com  
Office: 562.595.7401 Ext. 257  
Cell: 310-780-6742  
www.termoco.com

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## Meyers Nave Announces Addition To It's Legal Team

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Meyers Nave is pleased to announce its newest Principal, **Maribel Medina, Esq.**, has join the firm. Additionally, Meyers Nave recently hosted an open house on March 8th at its new location of 633 West 5th Street, Suite 1700, Los Angeles, CA 90071.

Ms. Medina contact information is:

Maribel Medina, Esq.  
Meyers Nave  
633 West 5th Street  
Suite 1700  
Los Angeles, CA 90071  
213.626.2906  
mmedina@meyersnave.com



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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](mailto:dsgordon@stanford.edu) to see how you can help.





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## Educational Corner

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### EDUCATIONAL CORNER

Jason Downs, Downchez Energy  
Education Chair

Need continuous education credit? Listed below are continuous educational courses available for the first quarter of 2012. The American Association of Professional Landmen (AAPL) is committed to providing education seminars and events that support our membership base. In Addition, you can generally earn credits by attending our luncheons based upon speaker and subject matter. [www.landman.org](http://www.landman.org)

#### March 2012

##### **Intro to Filed Land Practices & Optional RPL Exam**

When: March 8<sup>th</sup> – 9<sup>th</sup>, 2012

Where: Zanesville, OH

RL/RPL Continuing Education Credits: 13.0

CPL Recertification Credits: 13.0

CPL/ESA Ethics Credits: 0.0

##### **Field Landman Seminar**

When: March 15<sup>th</sup>, 2012

Where: Lafayette, LA

RL/RPL Continuing Education Credits: 2.0

CPL Recertification Credits: 2.0

CPL/ESA Ethics Credits: 0.0

##### **2012 Mining & Land Resources Institute**

When: March 15<sup>th</sup> – 16<sup>th</sup>, 2012

Where: Reno, NV

RL/RPL Continuing Education Credits: 11.0

CPL Recertification Credits: 11.0

CPL/ESA Ethics Credits: 0.0

##### **Oil & Gas Land Review, CPL/RPL Exam**

When: March 20<sup>th</sup> – 23<sup>rd</sup>, 2012

Where: Pittsburgh, PA

RL/RPL Continuing Education Credits: 18.0

CPL Recertification Credits: 18.0

CPL/ESA Ethics Credits: 1.0

#### April 2012

##### **Advanced Contracts Series: Structuring Exploration Deals**

When: April 9<sup>th</sup>, 2012

Where: Oklahoma City, OK

*This institute is accredited by AAPL*

RL/RPL Continuing Education Credits: 7.0

CPL Recertification Credits: 7.0

CPL/ESA Ethics Credits: 0.0

##### **Oil & Gas Land Review (CPL/RPL Exam)**

When: April 11<sup>th</sup> – 14<sup>th</sup>, 2012

Where: Midland, TX

*This institute is accredited by AAPL*

RL/RPL Continuing Education Credits: 18.0

CPL Recertification Credits: 18.0

CPL/ESA Ethics Credits: 1.0

##### **Field Landman Seminar**

When: April 12<sup>th</sup>, 2012

Where: Oklahoma City, OK

*This institute is accredited by AAPL*

RL/RPL Continuing Education Credits: 2.0

CPL Recertification Credits: 2.0

CPL/ESA Ethics Credits: 0.0

##### **Applied Land Practices**

When: April 16<sup>th</sup>, 2012

Where: Bismarck, ND

*This institute is accredited by AAPL*

RL/RPL Continuing Education Credits: 7.0

CPL Recertification Credits: 7.0

CPL/ESA Ethics Credits: 1.0



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Educational Corner - (continued)

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**Southwest Land Institute**

When: April 17<sup>th</sup>, 2012

Where: Fort Worth, TX

*This institute is accredited by AAPL*

RL/RPL Continuing Education Credits: 7.0

CPL Recertification Credits: 7.0

CPL/ESA Ethics Credits: 0.0

**Working Interest/Net Revenue  
Interest Calculations Workshop**

When: April 20<sup>th</sup>, 2012

Where: Oklahoma City, OK

*This institute is accredited by AAPL*

RL/RPL Continuing Education Credits: 6.0

CPL Recertification Credits: 6.0

CPL/ESA Ethics Credits: 0.0

**Working Interest/Net Revenue  
Interest Calculations Workshop**

When: April 21<sup>st</sup>, 2012

Where: Fort Worth, 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

**Field Landman Seminar**

When: April 23<sup>rd</sup>, 2012

Where: Dickinson, ND

*This institute is accredited by AAPL*

RL/RPL Continuing Education Credits: 2.0

CPL Recertification Credits: 2.0

CPL/ESA Ethics Credits: 0.0

**Working Interest/ Net Revenue  
Interest Calculations Workshop**

When: April 27<sup>th</sup>, 2012

Where: Pittsburgh, PA

*This institute is accredited by AAPL*

RL/RPL Continuing Education Credits: 6.0

CPL Recertification Credits: 6.0

CPL/ESA Ethics Credits: 0.0

**Fundamentals of Land Practice  
And Optional RPL Exam**

When: April 30<sup>th</sup> – May 1<sup>st</sup>, 2012

Where: Fort Worth, TX

*This institute is accredited by AAPL*

RL/RPL Continuing Education Credits: 7.0

CPL Recertification Credits: 7.0

CPL/ESA Ethics Credits: 0.0

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MAY 2012

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**Principles of Land Practice  
And Optional RPL EXAM**

When: May 3<sup>rd</sup>- 4<sup>th</sup>, 2012

Where: Pittsburg, PA

*This institute is accredited by AAPL*

RL/RPL Continuing Education Credits: 14.0

CPL Recertification Credits: 14.0

CPL/ESA Ethics Credits: 0.0

**Working Interest/ Net Revenue  
Interest Calculations Workshop**

When: May 5<sup>th</sup>, 2012

Where: W. Houston, 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

**Working Interest/ Net Revenue  
Interest Calculations Workshop**

When: May 10<sup>th</sup>, 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

**Working Interest/ Net Revenue  
Interest Calculations Workshop**

When: May 11<sup>th</sup>, 2012

Where: Shreveport, LA

*This institute is accredited by AAPL*

RL/RPL Continuing Education Credits: 6.0

CPL Recertification Credits: 6.0

CPL/ESA Ethics Credits: 0.0

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## Educational Corner - (continued)

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### **Oil & Gas Land Review, CPL/RPL Exam**

When: May 15<sup>th</sup>-18<sup>th</sup>, 2012

Where: Woodlands, TX

*This institute is accredited by AAPL*

RL/RPL Continuing Education Credits: 18.0

CPL Recertification Credits: 18.0

CPL/ESA Ethics Credits: **0.0**

### **JOA Seminar-Comprehensive Review of Operating Agreements and Well Trades**

When: May 22<sup>nd</sup> – 23<sup>rd</sup>, 2012

Where: Pittsburgh, PA

*This institute is accredited by AAPL*

RL/RPL Continuing Education Credits: 14.0

CPL Recertification Credits: 14.0

CPL/ESA Ethics Credits: **0.0**

### **The Division Order Process**

When: May 25<sup>th</sup>, 2012

Where: Denver, CO

*This institute is accredited by AAPL*

RL/RPL Continuing Education Credits: 7.0

CPL Recertification Credits: 18.0

CPL/ESA Ethics Credits: **0.0**

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## JUNE & JULY 2012

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### **AAPL Annual Meeting**

When: June 13<sup>th</sup> – 16<sup>th</sup>, 2012

Where: San Francisco, CA

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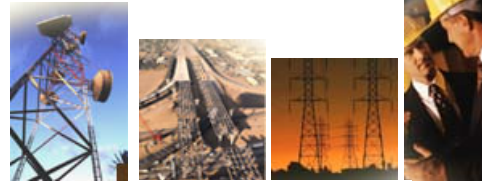
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~Tim Marquez, Founder and Chairman



**Court of Appeal Upholds Regulatory Takings Decision Under Penn Central Test**

*Rick E. Rayl, Esq.,*

*Law Firm of Nossaman LLP - All Rights Reserved*

Regulatory takings claims are notoriously hard to prove. Myriad substantive legal obstacles exist to establishing a successful claim. Even worse for property owners, often they never even get the chance to argue their cases on the merits, as they fail to overcome one or more of the several procedural hurdles. As a result, it is rare to see a published decision come down in favor of a property owner – and even more rare to see a decision upholding a claim based on the U.S. Supreme Court’s landmark decision in *Penn Central*.

But this is exactly what happened earlier this week in a decision arising from a down zoning in the City of San Clemente. In *Avenida San Juan Partnership v. City of San Clemente*, 2011 Cal.App. LEXIS 1564 (Dec. 14, 2011), the Court of Appeal upheld a judgment that ordered the City of San Clemente to choose between (1) rescinding a decision rejecting the owners’ applications for development permits or (2) paying the owners damages for a regulatory taking of their property.

In reaching this decision, the Court navigated the complex substantive and procedural issues, concluding that the claim was timely and proper procedurally, and that the owner had established all of the requirements for a taking under *Penn Central*’s three-prong test. The Court remanded for a redetermination of the damages to be awarded in the event the City elects the second of its two options.

**The Background.** The story for this case dates back 20 years. The owners purchased the property in 1980, with the intention of building four residences on the 2.85-acre property, a density permitted under the property’s zoning. Shortly after purchasing the property, the owners secured entitlements for just such a development. Despite securing the entitlements, the owners did not commence construction.

In 1983, a group of neighbors petitioned the City to rezone the property as open space. The City refused because, among other reasons, the City attorney opined that such a rezoning would constitute a compensable taking. For the next decade, little happened with the property.

In 1993, the City amended its general plan, creating a new zoning category, RVL (residential, very low), which provided for one residential unit per 20 acres. In the enabling legislation for the new zone, the RVL designation was described as being intended for preserving “open space in canyons” by rezoning “significant acreage.” The property at issue was less than three acres, and it was not located in a canyon. Despite this, the City applied the new RVL zoning to the property in 1996. All the surrounding properties remained zoned RL, which permitted four dwellings per acre.

Again, most of a decade passed without incident. Finally, in 2006, the owners submitted new applications, once again seeking the right to develop four dwellings. In light of the RVL zoning, the applications included requests to change the zoning and general plan, presumably to return the property to its prior, RL designation. In 2007, the City denied the applications, concluding that the development plan did not conform to the property’s zoning, and the owners sued.

**The Trial Court Proceedings.** The court first heard the owners’ writ of mandate claim, seeking to overturn the denial of their applications. The trial court concluded that the down zoning qualified as an arbitrary and capricious “spot zoning,” and it issued the writ.

With respect to the inverse condemnation claim, the court found that a compensable taking had occurred. The court awarded damages of \$1.3 million, which it found to be the overall value of the property (\$2.8 million), less the anticipated cost to build a driveway needed to support its development (\$1.5 million).

The City filed a motion for new trial claiming, among other things, that the two decisions had the effect of a “double recovery” by forcing the City both to rescind its decision and to pay damages. The trial court agreed, and pursuant to *Hensler v. City of Glendale* (1994) 8 Cal.4th 1, the court modified the judgment to provide that the City could elect to either rescind its decision or pay the damages. The City appealed.

**Spot Zoning.** In analyzing the propriety of the writ, the Court of Appeal examined the rules related to so-called “spot zoning.” The idea is simple: if the government targets a specific property for zoning treatment different from other similarly-situated properties – especially where it does so for an improper purpose – the zoning can be invalidated. The Court held that the City had specifically targeted this property for down zoning, leaving it as an “island” of “minimum



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## Case Of The Month - Right of Way (continued)

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lot size zoning in a residential ocean of substantially less restrictive zoning.” This was enough to qualify as “irrational discrimination” under cases such as *Hamer v. Town of Ross* (1963) 59 Cal.2d 776. The Court upheld the writ.

**Penn Central and “Economically Viable” Uses.** Next, the Court turned to the takings decision. The City argued that its action fell short of a regulatory taking, as a matter of law, because the RVL zoning did not leave the owner with no economically viable use of the property, a fatal flaw under *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003. The Court found this view “too limited,” explaining that a taking occurs where a regulation goes “too far,” even if some economically viable use remains. (See *Palazzolo v. Rhode Island* (2001) 533 U.S. 606.) Where this occurs, courts look to the three-part test established in *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978), analyzing:1.

1. The economic effect on the landowner;
2. The extent of the regulation’s interference with investment-backed expectations; and
3. The character of the governmental action.

The Court quickly concluded that all three factors “readily appl[ie]d” in this case. In terms of economic effect, the Court reasoned that the trial court’s determination that the damages suffered were \$1.3 million established the first prong.

In terms of investment-backed expectations, the Court again made quick work of the issue, concluding that the owners’ reasonable expectation when they purchased the property was that they could develop it in accordance with the property’s then-existing zoning – a zoning which predominated the area.

Finally, in terms of the character of the governmental action, the Court was convinced that the City’s motivation was merely to keep the property as open space, as evidenced by the facts that (a) the RVL zoning, on its face, seemed to have no application to the property, (b) the RVL zoning was inconsistent with a residential area, and (c) the surrounding properties all retained the earlier RL zoning, leaving the property as an island.

The Court affirmed the trial court’s decision that a taking had occurred.

**Standing.** Before turning to the damages award, the Court examined the procedural hurdles, looking both at statute of limitations and ripeness defenses. Many regulatory takings claims fail these dual tests, and the City raised a number of arguments that the owners were both too late – and too early – to make their claims.

The City argued that the owners waited too long to challenge the RVL zoning, which was applied to the property more than 10 years before the lawsuit commenced. The Court disagreed, concluding that the statute of limitations began to run on the challenge only when the City denied the owners’ development applications in 2007. The Court went through a painstaking analysis of the difference between “facial” and “as applied” challenges, holding that the owners’ challenge mirrored the challenge in *Travis v. County of Santa Cruz* (2004) 33 Cal.4th 757. As the court held in *Travis*, this type of challenge falls on the “as applied” side of the ledger, making it timely.

Next, the City argued that if the owners’ claims were not too late, then they were too early, failing on ripeness grounds because the owners failed to apply for entitlements to build what the RVL would have allowed them: a single dwelling. The Court rejected this argument as well, holding that the Supreme Court had rejected almost the exact argument in *Palazzolo*.

**Damages.** Having upheld the trial court’s determinations on the merits, the Court turned to the damages calculations. The trial court had performed a simple analysis, taking opinions of the value of the property absent the RVL zoning, and subtracting out the cost the owners would have incurred to build the (expensive) driveway necessary to support the property’s development.

The Court correctly noted that this methodology only worked if the taking was complete – i.e., if the taking left the owner with no economically viable use of the property. Otherwise, a proper damages assessment must take into account the property’s residual value. As the Court explained: “A very large taking is not a total taking.” While this sounds like good news for the City, there was a bit more to the story. The Court concluded that the trial court may have intentionally understated the damages figure at a time when it believed the City would have no choice but to pay the award.

In other words, at the time the Court set the \$1.3 million figure, it had not yet reached its decision under *Hensler* that the City would have the option to rescind its decision to avoid paying the damages. The Court specifically noted that the trial court claimed to have “low-balled” the damages, and that it may not have been “really focused, as the law requires, on fair market value.”

## Case Of The Month - Right of Way (continued)

**Attorneys' Fees.** Finally, the Court turned to the attorneys' fees award, which the owners had appealed. The owners complained that the trial court had not awarded any fees for one of the owners' time, even though the owner was an attorney. They also complained that the trial court failed to apply a fee multiplier in recognition of the nature of the case and its risk. Such multipliers are common in direct eminent domain actions where the court concludes that the nature of the case, its complexity, the amount at stake, and the risk the attorneys took in taking the case warranted such a multiplier.

The Court rejected both claims. Applying the plain language of Code of Civil Procedure section 1036, the Court noted that fees could be recovered only to the extent they were "actually incurred." Concluding that the owners incurred no actual fees for the services of the attorney-owner and no "multiplier" fees, the Court upheld the fee award, noting that if public policy demanded that provisions exist for things such as fee multipliers in inverse condemnation cases, that was for the Legislature to address, not the courts.

**Lessons Learned.** From the government's standpoint, the opinion serves as a reminder that the tide may well be turning in regulatory takings jurisprudence. Blatant efforts to spot zone a property with a zoning designation that, on its face, should not apply to that property may well result in liability. Courts may also look with more scrutiny at a common tactic cities have used to stave off takings claims. The "just because we rejected this application does not mean we'll reject some other application" defense has long been used to defend these types of claims, but where the government's intent is pretty clear, the courts may not require owners to continue in futile entitlement efforts before imposing liability.

From an owner's perspective, the lessons are a little trickier to divine, which makes sense: the owners won. But a couple of thoughts come to mind. First, even though it worked here (at least so far, pending any California Supreme Court review), it seems unwise to allow a decade to pass after the city down zones your property. While the Court held that this challenge qualified as an "as applied" – and therefore timely – challenge, the result could have gone the other way. And, if the City had provided better notice to the owners back in 1996, it may well have. Second, if you're counting on a massive fee award, take care to structure your fee arrangements so that you meet the "actually incurred" test. With respect to the owner-attorney, the owners' group could have solved the problem by having a fee agreement under which the owner would be compensated for his time. (There's risk there, of course, as this could leave an owner with a massive fee bill if the claim fails, but a careful contingency fee could help address that issue.)

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## SoCalGas Demonstrates New Technology to Help Businesses Meet Strict Air Quality Regulations

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### Technology Makes it Easier to Monitor Air Emissions

Businesses in California's South Coast Air Basin who operate stationary natural gas engines for heat and power may soon have in their toolbox new technology that will make it easier and more efficient to monitor and auto-correct air emissions in order to meet strict air quality regulations.

Commended: Josie Gonzales, San Bernardino County 5th District Supervisor and Chairwoman and SCAQMD Governing Board Member, presents certificates of commendation to, from left, Jeff Reed, director of Emerging Technologies at SoCalGas/SDG&E, Mike Logsdon, owner of Fontana Wholesale Lumber, and Pablo Gutierrez of the California Energy Commission.

### SoCalGas R&D and CEC Fund Research

This is thanks to Southern California Gas (SoCalGas) who recently announced at an event the successful field trial of ultra low-emission control technology for gas engines at Fontana Wholesale Lumber in Fontana, Calif.

There were nearly 40 people in attendance, including Josie Gonzales, San Bernardino County 5th District Supervisor and South Coast Air Quality Management District (SCAQMD) Governing Board Member; Michael Townsend of Congressman Joe Baca's office, a representative from Senator Gloria McLeod's office, State Assemblyman Mike Morrell, a representative of Senator Bob Dutton's office and a number of staff members. Also in attendance were business customers as well as employees from SoCalGas, Continental Controls and Fontana Wholesale Lumber.

The six-month demonstration project was funded in part by the California Energy Commission and SoCalGas' research and development group. Fontana Wholesale Lumber produces nearly 100 percent of its electricity on site and uses waste heat from a combined heat and power natural gas engine to operate kilns used to treat lumber.

New tech: Lumber used in the construction industry enters a vessel to be pressure treated with fire retardant. The lumber then goes to a kiln where waste heat from the natural-gas-fueled engine is used to dry the wood.

### Natural Gas Helps Meet Air Quality Regulations



*New tech: Lumber used in the construction industry enters a vessel to be pressure treated with fire retardant. The lumber then goes to a kiln where waste heat from the natural-gas-fueled engine is used to dry the wood.*



*Commended: Josie Gonzales, San Bernardino County 5th District Supervisor and Chairwoman and SCAQMD Governing Board Member, presents certificates of commendation to, from left, Jeff Reed, director of Emerging Technologies at SoCalGas/SDG&E, Mike Logsdon, owner of Fontana Wholesale Lumber, and Pablo Gutierrez of the California Energy Commission.*

"Natural gas is an environmentally clean, abundant and domestically produced fuel. As such, it plays a vital role in helping businesses meet stringent air quality regulations," said Hal Snyder, vice president of customer solutions at SoCalGas. "This breakthrough low-emission control technology has strategic importance in a region where the latest emissions requirements have been lowered to unprecedented levels."

Up until now, it has been difficult for a stationary gas engine to maintain long-term compliance with stringent permit limits without operator assistance. The advanced system, developed by Continental Controls Corp. of San Diego, relies on fast-responding hardware and software that provide excellent control and mixing of fuel and air for optimum combustion and use of advanced air emissions sensors for engine feedback control. The system is a retrofit conversion kit for rich-burn engines.



Special Article - (continued)

SoCalGas' research, demonstration and development efforts are focused on advancing technologies to meet air quality regulatory requirements in the SCAQMD, which now require new natural gas engines used in distributed generation to meet 2 parts per million (ppm) of nitrogen oxides, or NOx, 8 ppm of carbon monoxide, or CO, and 7 ppm of volatile organic compounds, or VOC.

Agencies Working Together

"This project is an excellent example of how agencies are working together to develop and implement innovative solutions that help our region achieve a balance between generating a stronger economy and achieving Southern California's clean air mandates," said San Bernardino County Chair and Fifth District Supervisor Josie Gonzales, who represents the County on the AQMD Governing Board.

Gonzales added, "I applaud SoCalGas for helping our local businesses, like Fontana Wholesale Lumber, meet our region's air quality requirements. A multifaceted approach such as this shows how essential collaboration is to getting things done for everyone's benefit."

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## LAAPL Legislative Affairs Update

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By **Olman J. Valverde, Esq., & Mike Flores, Co-Chairs, Legislative Affairs Committee**  
**Luna & Glushon**

### **Brown Announces New Appointments**

Governor Jerry Brown recently announced several appointments including several positions affecting oil and natural gas regulation and development.

Jason Marshall, 42, of Sacramento, has been appointed chief deputy director at the California Department of Conservation. Gordon Burns, 51, of Davis, has been appointed undersecretary at the California Environmental Protection Agency and Acting DOGGR Supervisor Tim Kustic was appointed as the permanent Supervisor.

### **California Air Resource Board (CARB) LCFS Blocked by Judge**

A federal judge has blocked the California Air Resources Board (CARB) Low Carbon Fuel Standard (LCFS) rules applicable to refiners of gasoline and other fuels that generate greenhouse gas emissions.

District Judge Lawrence O'Neill of the federal court in Fresno issued a preliminary injunction. Judge O'Neill found that the regulation adopted in 2010 unconstitutionally discriminated against out-of-state producers and impermissibly tried to regulate commercial activities outside California. CARB plans to appeal, according to several published reports.

The regulation was intended to force transportation fuel providers to reduce their fuel's carbon footprint by 10 percent by 2020, as part of a state effort to reduce greenhouse gas emissions to 1990 levels by 2020.

### **AB 1054 Re-Introduced**

#### Stand Lands Commission Sponsors Legislation to Change Quitclaim Requirements

Assemblymember Nancy Skinner has moved forward a bill requiring quitclaim of leases on state land to be heard before the State Lands Commission (SLC) for their approval.

Existing law allows lessees of oil and gas and mineral leases to make and file with the commission a written quitclaim or relinquishment of all rights under a lease comprising a particular parcel. The quitclaim or relinquishment becomes effective as of the date of its filing subject to specified conditions.

AB 1054 would change existing law by requiring a lessee to file a written request to the commission for approval of a quitclaim or relinquishment of all rights under an oil and gas and mineral lease. The bill would also require that the request for a quitclaim be heard at a commission meeting.

The changes provided in this bill would eliminate the flexibility that is sometimes needed in order for the appropriate development of the state's resources. It is common for oil and gas leases to provide for partial quitclaim of property in order to adjust for changes in operations or business circumstances. The proposed language would create uncertainty and opens the door for unforeseen obligations being placed on lease operators.

This bill was previously introduced, approved by the legislature and vetoed by the previous administration citing the lack of need for the legislation. AB 1054 passed in the Assembly on January 26, 2012 and is currently in the Senate awaiting a committee destination. CIPA is actively opposing AB 1054.

### **AB 1966**

#### 10-Day Notice of Intent to Enter Land

Assemblywoman and Speaker Pro Tempore Fiona Ma has introduced legislation requiring lease operators to provide to the surface owner a 10-day written notice of the intent to enter the surface owner's property for the purpose of extracting oil, gas or other minerals. AB 1966 further states that the operator shall provide to the surface owner a copy of the applicable recorded short form or memorandum of lease within 10 days prior to entering the surface owner's property.

Notice provisions are standard terms that are already included in oil and gas leases used in California. This bill thus creates uncertainty as it would vary contract terms that are privately negotiated between contracting parties. In addition, the bill does not allow for circumstances in which a ten day notice cannot be given due to changes in the availability of equipment.

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## Case of the Month - Oil & Gas

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### **The Fight Over How to Value Petroleum Refineries**

*By Bradford B. Kuhn, Esq.,*

*Law Firm of Nossaman LLP - All Rights Reserved*

With the elimination of redevelopment agencies in California, we've been spending quite a bit of time lately discussing the impacts of Proposition 13 on California's budget woes as government agencies continue to fight over a slice of the shrinking property tax budget pie. Proposition 13 has led to another interesting property valuation battle between county tax assessors and petroleum refineries, and the California Court of Appeal recently issued a published decision, *Western States Petroleum Association v. State Board of Equalization*, settling the dispute.

**Prop 13 Background:** By way of background, Proposition 13 -- enacted in 1978 -- provides that real property taxes shall be based on the property's acquisition price (the "base year value"), and such amount cannot be increased more than 2 percent per year. It essentially changed our real property tax system from one based on the current market value of the property to one based on the acquisition value of the property, plus an allowable increase over time. Shortly thereafter, Proposition 8 was adopted to amend Prop 13 and make clear that if property values decline below the taxable indexed value, the taxable value may be adjusted down to reflect the property's fair market value.



**Valuation of Land, Improvements & Fixtures:** In order to implement Prop 13, the State Board of Equalization (SBE) then adopted Rule 461, which provides that land and improvements shall constitute an appraisal unit, and fixtures, equipment and other improvements pertaining to the realty shall constitute a separate appraisal unit. Ignoring our recent real estate recession, this valuation methodology created a perfect world for industrial property owners: on the one hand, as property values continued to rapidly increase, property taxes were subject to the Prop 13 cap; on the other hand, as fixtures and equipment continue to depreciate over time, property taxes on these items had no floor. Thus, industrial property owners could actually see their property taxes decline despite a surging real estate market.

**The Litigation:** Not too happy with this valuation approach, in 2007 (the market peak), the SBE adopted Rule 474, which directed county tax assessors to start treating land, improvements, and all fixtures and equipment as a single appraisal unit for petroleum refineries. This would, of course, mean that all the depreciation of the fixtures and equipment would be wiped out by the increasing property tax values (meaning refineries' property taxes would increase). Petroleum refineries fought back and filed a lawsuit challenging the SBE's new regulation.

The trial court declared that the SBE's new regulation did not pass constitutional muster, as it violated Prop 13 and contradicted the SBE's own regulations. On appeal, the Court agreed, holding that the SBE's proposed regulation would "allow for the adoption of new valuation formulas by which the framework governing real property could be manipulated to avoid the restrictions on real property taxes imposed by the voters when they approved Prop. 13 and Prop. 8."

So, petroleum refineries win. This is good news for industrial property owners across the State; if the court had upheld this regulation, it's probably not much of a stretch to think the SBE might turn to other types of properties in another effort to collect more taxes. Mr. Kuhn can be reached at [bkuhn@nossaman.com](mailto:bkuhn@nossaman.com).