



# The Override

Every Landman Wants One!

Volume VIII, Issue III

January, 2014



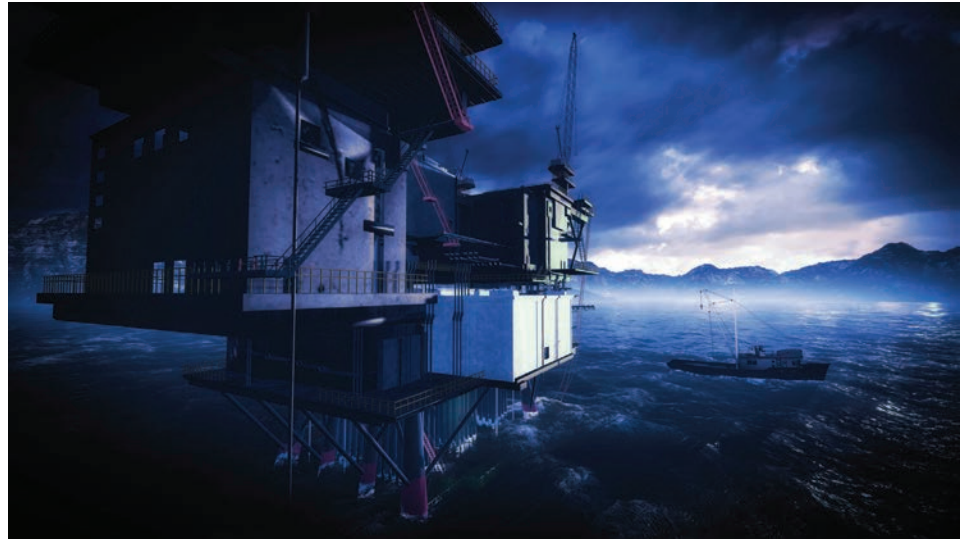
## Los Angeles Association of Professional Landmen

### Presidents Message

**Paul Langland, Esq.  
Independent**

I've never been one for new years' resolutions. As one great sage put it, "Life moves pretty fast. If you don't stop and look around once in a while, you could miss it." To try and fix your life, diet, finances and your job all at once at the first of the year just sounds like a failure waiting to happen. I've always found that it's better to live under certain lifelong principles and tinker with the day to day and week to week situations as they arise.

I was in a meeting the other night talking about a project with six local stakeholders and several of them relayed we were being too defensive about a project. They said we should be more proud and positive in describing something that could bring dramatic and positive changes to the community. That was one of those "aha!" moments for us that made us rethink about our



*Oil rig platform in Arctic Sea.*

formal and informal presentations. Sometimes we arm ourselves with reams of data and facts we in the industry know that we need to meet the requirements as set forth in CEQA, but sometimes we forget that, for the most part, our audience are normal people who really only want short, direct and positive answers to their concerns.

They don't want the finer points of understanding the Pugh Clause or PRC Section 3608 ("forced leasing" section most relevant for urban areas...yes, it's a tool all urban land professionals need to familiarize themselves with). They want ethical, knowledgeable, direct and honest discussions.

January is a great month for reflection, to look back at our past successes (and rooms for improvement) and look ahead to our ongoing challenges. In fact, the Roman god Janus (January is named for him) is a two headed guy that looks back at the year past and forward to the year ahead.

Here's hoping you had a productive 2013 and 2014 brings you lots of discoveries, clean title and oil and gas prices that continue to generate great prospects and projects!

### Meeting Luncheon Speaker



History of the California Oil and Gas Industry

The guest speaker for the Los Angeles Association of Professional Landmen and the Los Angeles Basin

Geological Society annual joint luncheon is Edward S. Renwick, Esq., with the firm of Hanna and Morton LLP.

Ed is experienced in natural resources and environmental matters such as contaminated property, ground-water problems, air quality matters, CERCLA, RCRA, toxic torts, natural gas pricing, geothermal resources, oil and gas, zoning, title matters, alternative energy, renewable energy and land use. He also has handled cases involving contract disputes, constitutional issues, antitrust law, partnership accounting, trusts and estates, income taxation and property taxation.

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## Opinionated Corner

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**Joe Munsey, RPL**  
**Newsletter/Publishing Co-Chair**  
**Southern California Gas Company**

Happy New Year! Welcome back from the holidays – assuming all have shaken off the fog of the holiday festivities by now. Trusting all enjoyed your version of the holidays; Christmas, Chanukah or Three Kings Days. May all prospects produce hydrocarbons in paying quantities.

It is the beginning of the New Year and whence does the wandering mind settle in on yet another Progressive target(s) to slay? During the hustle and bustle of the holidays one cannot allow the mind to wander adrift and not ponder whom to point out the blunders of their spoken words. One articulated statement which turns into an unintended gaffe and forever follows the person.

To set the stage for where we are going with this, a couple of former presidents painfully learned they will persistently be remembered by what they spoke. Richard Nixon famously quoted, “I am not a crook.” The first president Bush promised no new taxes by emphasizing his notorious last words on the matter, “Read my lips, no new taxes.”

Turning the spotlight on a couple of living Progressive public figures we now can have some fun.

“You can keep your insurance.... period.” The longevity of that promise no doubt will have an extensive life span. As the health debacle continues to unravel like a cheap suit and accusations are flying in all directions; the current Hipster-in-Chief mustered his best response in an interview with MSNBC’s Chris Matthews. The chic president stated the law’s difficulties do not reflect problems in his “personal

management style” but rather the flaws of government agencies, “some of which are not designed properly.”

Finally, the shroud has been lifted on whom to blame when it comes to his pitiable presidential management style; the buck does not stop at the oval office, it is passed on to governmental bureaucrats. I swear the current president claimed Progressive governance was the answer to all that ails America and the world.

I was given a business card several years ago which on the back of the card stated, “The man who is smiling has already figured out someone else to blame.” Next time you see the President smiling, yup – he has found someone or a government to blame.

Now here is a real piece of work when it comes to bloopers, blunders, and general self-inflicted PR malaise; the former Secretary of State, Hillary Clinton. When confronted about possible human rights abuse going on in Egypt at the time President Mubarak was still goosing his country for all its worth, the former Secretary of State Clinton deflected the questioning with classic Hillary Clinton rambling and then stated her and President Mubarak had a wonderful visit early that morning, “I really consider President and Mrs. Mubarak to be friends of my family. So I hope to see him often here in Egypt and in the United States.”

Wondering if Hillary ever got a chance to drop by the prison hospital, where the patient Mubarak was checked in, as the Arab Spring was blossoming; or if she ever got around to ordering flowers for the poor man as he laid there languishing. Family ties are real important during troublesome times.

Much like rocker Mick Jagger owns the phrase, “I can’t get no satisfaction,” Obama gets to own, “You can keep your insurance...period.” There is so much balderdash and drivel coming out of Hillary at times only history will be able to pluck out the crème de la crème and that is a nice way of saying it.

Meanwhile, we have our annual joint luncheon with the Los Angeles Basin Geological Society this month with LAAPL handling the speaker presentation. Long time LA Basin oil and gas attorney Ed Renwick will do the honors. See you at the **Grand at Willow Street Convention Center** on the **fourth Thursday** of the month and not the Long Beach Petroleum Club on the third Thursday of the month.

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## Get Ready...Set...Go!

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### Nominations for LAAPL 2014 - 2015 Officers

It is that time of the year to start considering a run for a LAAPL Chapter Officer for the 2014 – 2015 term. The following offices are open:

President<sup>1</sup>

Vice President

Treasurer

Secretary

LAAPL Local Director

LAAPL Local Director

<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.

Luncheon Speaker  
continued from page 1

In addition to maintaining his law practice, Mr. Renwick served as vice president and general counsel of a California independent oil and gas company from 1973 through 1991.

Since 1974, Mr. Renwick has been a Fellow of the American College of Trial Lawyers, to which admission is by invitation only and is “**limited to those trial lawyers who are outstanding and considered the best in a state.**”

## 2012–2013 Officers & Board of Directors

Paul Langland, Esq.  
President  
Independent  
310-997-5897

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

Jason Downs, RPL  
Vice President  
Breitburn Managemt Company LLC  
213-225-5900

Cliff Moore  
Secretary  
Independent  
818-588-9020

Sarah Downs, RPL  
Treasurer  
Downchez Energy, Inc.  
562-639-9433

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

Joe Munsey, RPL  
Director  
Southern California Gas Company  
562-624-3241

Mike Flores  
Region VIII AAPL Director  
Luna & Glushon  
310-556-1444

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

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

Membership Chair  
Cambria Henderson  
OXY USA Inc., LA Basin Asset  
562-495-9373

Education Chair  
TBD

Legislative Chairs  
Olman Valverde, Esq., Co-Chair  
Mike Flores, Co-Chair  
Luna & Glushon  
310-556-1444

Golf Chair  
Diane Ripley  
Kirste Ripley Public Relations  
562-883-3001

Nominations Chair  
Scott Manning, CPL  
Breitburn Managemt Company LLC  
213-225-5900



## Chapter Board Meetings

### Cliff Moore, Independent Chapter Secretary

The LAAPL Board of Directors and Committee Chairs held their November 21, 2013 meeting after the LAAPL luncheon of the same date. The matters discussed this meeting were:

- New member applications and qualifications.
- Preparations for the Christmas Party.
- Vacation of the Educational Committee Chair.
- Supporting Mike Flores for representing LAAPL at AAPL meetings and conferences.
- Treasury matters.
- Other chapter business.

Because the Board of Directors and Committee Chairs hold their meetings in the same room as the luncheon, and right after the guest speaker has wowed us, we encourage members to attend so you can see your Board in action.



### Scheduled LAAPL Luncheon Topics and Dates

#### January 23rd

[4TH Thursday]

Annual Joint Meeting with  
Los Angeles Basin Geological Society  
Edward Renwick, Esq., of Hanna and  
Morton LLP

“History of the California Oil and Gas  
Industry”

#### March 20th

Tracey K. Hunckler, Esq., of  
Day Carter Murphy, LLP  
"Review of SB-4"

#### May 15th

TBD

Officer Elections



## Treasurer's Report

As of 11/17/2013, the LAAPL account showed a balance of	\$ 21,906.60
Deposits	\$ 875.00
Total Checks, Withdrawals, Transfers	\$ 9,293.58
Balance as of 01/14/2014	\$ 13,488.02
Merrill Lynch Money Account shows a total	\$ 11,096.90

## Reminder for Dues

### Sarah Downs, RPL Downchez Energy, Inc. LAAPL Treasurer

Sarah Downs, Chapter Treasurer will be calling for dues late Spring; which will be due by June 2014 for the 2014 – 2015 year. Cost: a mere bargain at \$40.00.

## Announcement

### New Law Firm in the Los Angeles Basin

Aaron L. Botti, Esq. and David A. Ossentjuk, Esq. former partners in Musick, Peeler & Garrent are pleased to announce the formation of their new law firm: **Ossentjuk & Botti**

Our Practice Will Continue to Focus on:

- Oil & Gas Transactions, Litigation, and Regulatory Matters
- Corporate and Business Transactions
- Business and Real Estate Litigation
- Environmental Regulatory Matters and Disputes

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Suite 320  
Westland Village, California 91361  
TEL: 805.557.8081  
FAX: 805.456.7884

[www.oandblawyers.com](http://www.oandblawyers.com)

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## Lawyers' Joke of the Month

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

### How to Call the Police When You're Old, and Don't Move Fast Anymore

George Phillips, an elderly man, from Meridian, Mississippi, was going up to bed, when his wife told him that he'd left the light on in the garden shed, which she could see from the bedroom window.

George opened the back door to go turn off the light, but saw that there were people in the shed stealing things.

He phoned the police, who asked "Is someone in your house?"

He said, "No, but some people broke into my garden shed and are stealing from me."

Then the police dispatcher said, "All patrols are busy. Lock your doors and an officer will be along when one is available."

George said, "Okay."

He hung up the phone and counted to 30. Then he phoned the police again.

"Hello, I just called you a few seconds ago because there were people stealing things from my shed. Well, you don't have to worry about them anymore because I just shot them. The dogs are eating them now." and he hung up.

Within five minutes, three squad cars, a SWAT Team, a helicopter, two fire trucks, and an ambulance showed up at the Phillips' residence. The burglars were caught red-handed.

One of the policemen said to George, "I thought you said you shot them!"

"Right," said George, "and you said nobody was available!"



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## LAAPL and LABGS Hold Annual Joint Luncheon

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The Los Angeles Association of Professional Landmen and the Los Angeles Basin Geological Society will hold its joint luncheon in January. Please note the date of the luncheon is the fourth Thursday of January and the location is at the Grand at Willow Street Conference Center.

- When: Thursday, Jan 23rd [Fourth Thursday of the Month]
- Time: 11:30am
- Cost: \$20 with reservations  
\$25 without reservations
- Meeting Place: The Grand at Willow Street Conference Center  
4101 East Willow Street  
Long Beach, CA
- Speaker: Edward Renwick, Esq., of the Law Firm of Hanna and Morton, LLP
- Topic: "History of the California Oil and Gas Industry"
- Contact: Graham Wilson  
562-326-5278  
Gwilson@shpi.net

Online at [www.labgs.org](http://www.labgs.org).

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## Announcement

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### New Educational Player Hits the California Oil Patch

National Business Institute of Eau Claire, Wisconsin, a division of NBI, Inc. enters the California Oil Patch in 2014. The institute provides seminars, teleconferences, webcasts, OnDemand & MP3 Downloads, CDS, DVDS and books. LAAPL member and distinguished speaker, Jack Quirk, Esq. of Bright and Brown, is one of the presenters for two upcoming seminars being held in Ventura and Bakersfield in March. See Educational Corner for further details.

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## New Members and Transfers

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**Cambria Henderson**  
**OXY USA, Inc., LA Basin Asset**  
**Membership Chair**

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

### New Members

John Billeaud  
Landman  
Freeport-McMoRan Oil and Gas  
1200 Discovery Dr. Suite 500  
Bakersfield, CA 93309  
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The Woodlands, TX 77381

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Cambria Henderson  
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### Transfers - None

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landservices@askaurea.com

Sharon Sanchez  
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Laurie Whintont  
CalLand Services, LLC  
6606 Carracci Lane  
Bakersfield, CA  
Cal.land.service@gmail.com  
Work: (661) 742-1804

Ian Williamson  
Independent Landman  
557 E. Providencia Ave.  
Burbank, CA 91501  
englishlandman@gmail.com  
Cell: (818) 220-1855

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## Our Honorable Guests

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Our November guests of honor who attended:

Ken Johnson, Cypress Investments

Ted McGonagle, Charlestown Investments

Drew Jenkins, Landman, Signal Hill Petroleum

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## LAAPL Nominations Committee

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Scott Manning, CPL of BreitBurn Management Company, is LAAPL's Nominations Chair who will be seeking out qualified candidates for officers. The officers will serve from July 1st, 2014 – June 30th, 2015. For all qualified members interested in submitting their names as candidates are encouraged to contact the Committee Chair. Scott can be reached at 213-225-5900 or smanning@breitburn.com.

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, 2014. The election will take place at the last regular meeting of the Association this fiscal year, which is scheduled for May 15, 2014.



### 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

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## Case of the Month - Oil & Gas

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### PLACER CLAIMANT ENTITLED TO PATENT FOR MINERAL ESTATE ONLY, NOT SURFACE ESTATE, WHERE LAND WAS SUBSEQUENTLY DESIGNATED AS WILDERNESS AND CLAIMANT HAD NOT APPLIED FOR PATENT AT TIME OF DESIGNATION

By **Michael R. McCarthy, Esq.**  
**Law Firm of Parsons Behle & Latimer**

*Originally Published in the “Mineral Law Newsletter” of the  
Rocky Mountain Mineral Law Foundation, Volume XXX, Number 4, 2013*

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In *McMaster v. United States*, 731 F.3d 881 (9th Cir. 2013), the court addressed whether the Bureau of Land Management (BLM) properly granted Ken McMaster a patent to only the mineral estate while reserving the surface estate to the United States. McMaster’s predecessors located the Oro Grande placer claim on the South Fork of the Salmon River, near Redding, California, in 1934, and it was relocated several times, with the last relocation occurring in 1953. *Id.* at 883–84. In 1984, the area was withdrawn from mineral entry subject to valid existing rights by the California Wilderness Act of 1984, 16 U.S.C. §§ 543–543h. 731 F.3d at 886. In 1992, McMaster applied for a patent on the Oro Grande claim, and in 1994, the Secretary of the Interior issued McMaster a First Half Mineral Entry Final Certificate. In 2000, BLM issued a claim validity report confirming the discovery of valuable minerals in 1953. A draft of the report recommended issuing a patent for both the mineral and surface estate to McMaster, but BLM revised the report based on a May 22, 1998, Solicitor’s Opinion (M-36994) to only recommend a patent of the mineral estate. *Id.* at 884.

McMaster sued under the Quiet Title Act (QTA), 28 U.S.C. § 2409a. The court examined the meaning of the term “valid existing rights” in the following provision from the Wilderness Act, 16 U.S.C. §§ 1131–1136:

[H]ereafter, *subject to valid existing rights*, all patents issued under the mining laws of the United States affecting national forest lands designated by this chapter as wilderness areas shall convey title to the mineral deposits within the claim . . . , but *each such patent shall reserve to the United States all title in or to the surface of the lands and products thereof*, and no use of the surface of the claim or the resources therefrom not reasonably required for carrying on mining or prospecting shall be allowed except as otherwise expressly provided in this chapter . . . .

731 F.3d at 887 (alteration in original) (quoting 16 U.S.C. § 1133(d)(3)).

The court first looked to BLM’s regulations and policies, and the BLM Manual, to define “valid existing rights” in an effort to determine if BLM was required to convey the surface estate with a patent of lands later designated as wilderness. The court held that BLM’s guidance demonstrated that conveyance of both the surface and mineral estate by patent was proper, but discretionary. See *id.* at 888 (“[f]or claims located before enactment of the Wilderness Act . . . the claims must have a discovery as of the date of enactment to acquire the surface and mineral states” (alteration in original) (quoting BLM Manual H-3860-1, Mineral Patent Application Processing, at ch. III.B.5.c(1) (Rel. 3-265 Apr. 17, 1991))); *id.* at 889 (“BLM policy states that ‘[a] patent conveying both surface and mineral rights may be issued on a valid claim located prior to the date the area was included as part of the National Wilderness Preservation System.’ ” (alteration in original) (emphasis omitted) (quoting 46 Fed. Reg. 47,180, 47,199 (Sept. 24, 1981))).

The court then examined the solicitor’s opinion that directed that only “a claimant who had actually ‘filed a patent application, and established a right to a patent before the land in question was designated as wilderness’ by ‘complying with all the requirements for obtaining a patent,’ ” was entitled to a patent of both the mineral and surface estates. *Id.* at 889 (quoting Solicitor’s Opinion at 3, 21).

The court analyzed BLM’s interpretation of “valid existing rights” as mandated by the Solicitor’s Opinion for deference under *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). Under *Chevron* step one—whether the statutory language evidences Congress’ clear intent—the court first held that the meaning of “valid existing rights” in section 1133(d)(3) was ambiguous. 731 F.3d at 889–90. The court held that the ambiguity was created by the two competing positions offered by the litigants: (1) whether an applicant must have actually filed a patent application prior to or (2) whether locating a valid claim prior to the designation is sufficient (as suggested by BLM’s regulations, Manual, and policy and as advocated by McMaster). Under *Chevron* step two—whether the agency’s interpretation is based on

Case O & G  
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Case O & G  
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a permissible construction of the statute—the court held that because the agency’s position was based on the Solicitor’s Opinion, which “cannot properly be viewed as an administrative agency interpretation of statute that has the force of law,” BLM’s position did not require *Chevron* deference. *Id.* at 891 (quoting *The Wilderness Soc’y v. U.S. Fish & Wildlife Serv.*, 353 F.3d 1051, 1068 (9th Cir. 2003)).

The court, however, held that BLM’s position based on the Solicitor’s Opinion was entitled to deference under *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944), finding that its definition of “valid existing rights” was consistent with the text of 16 U.S.C. § 1133(d)(3) as well as the purpose of the Wilderness Act. 731 F.3d at 892–93. Accordingly, because McMaster had not filed his application for patent prior to the designation of the California Wilderness Act, BLM properly granted only a patent to the mineral estate. *Id.* at 896–97.

*Mr. McCarthy can be reached at [mmccarthy@parsonbehle.com](mailto:mmccarthy@parsonbehle.com) or 801-532-1234.*

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# Powering California’s Economy

We appreciate the role of the oil and gas industry in moving California’s economy forward. Our experienced lawyers help oil and gas clients succeed by advising on all aspects of their businesses, including:

- Title opinions
- Siting and permitting
- Regulatory approvals
- Litigation
- Exploration agreements and leases
- Property tax issues
- Environmental Compliance
- Joint operating agreements
- Farm-out agreements
- Joint venture agreements
- Unit and pooling agreements
- Gas, coal and industrial minerals sales agreements



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## Case of the Month - Right of Way

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### NEED PIPELINE --- GOT EASEMENT?<sup>1</sup>

By Noemi Cruz, Esq.  
Law Offices of Luna & Glushon

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**Pipelines.** They are indispensable to the production of oil and gas. As modes of transporting produced hydrocarbons from the drill site to storage and production facilities and to the point of distribution, they beat trucks hands down, in terms of safety, efficiency and cost-effectiveness. Ask any oil and gas producer.

**No easement, no pipeline.** No pipeline can be installed unless the oil and gas producer has an easement that affords the right to install the pipeline on each of the properties over which the pipeline must traverse to transport the oil and gas from drill site, to storage and production facilities, to the point of distribution.

**Easement Defined.** California courts define an easement as a non-possessory interest in the land of another. Unlike a lease, it is not an estate in real property.<sup>2</sup> An easement does not grant the easement holder an exclusive right to and control of the property. It creates in the easement holder only the right to use the property for a stated purpose<sup>3</sup> and the right and duty to maintain the facility or structure for which the easement was created.<sup>4</sup> The grantor of the easement retains ownership of the property, and the right to use the land in a manner not inconsistent with the easement.<sup>5</sup> An easement may be granted for a fixed period of time or in perpetuity.<sup>6</sup>

**Illustration.** A pipeline easement granted by a farmer to an oil and gas producer normally gives the oil and gas producer the right to install a pipeline on a defined strip of the farmland to transport oil, gas, natural gasoline and other hydrocarbons. The oil and gas producer has the right to enter the farmer's property to install the pipeline, to use the pipeline for the stated purpose, and the right and duty to enter the landowner's property to inspect and maintain the pipeline. The oil and gas producer does not have the right to possession of the strip of land that comprises the easement or to use that strip for any other purpose. The farmer, on the other hand, retains the right to use the surface of the farmland for his own purposes, in a manner that does not interfere with the pipeline easement. The farmer can grant the easement for a fixed period of time or in perpetuity.

**Traditional requirements for creation of an easement.** Traditionally, creation of an easement required compliance with formal rules for conveying real property. The easement was created by grant or quitclaim deed. For example, adjoining landowners in the same tract created a driveway easement for the benefit of all properties in the tract by written agreement and quitclaims to each other of the strips of land needed to create the easement.<sup>7</sup> A conveyance of an easement had to identify the grantor and grantee, adequately describe the property on which the easement was to be located (the "servient tenement") and use the formal words of conveyance. The easement document was also generally recorded to give notice of its existence to potential good faith purchasers. As an example, an easement was created by an "easement deed," a recorded PG&E printed form granting an easement.<sup>8</sup>

*Case R o W*  
*continued on page 9*

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<sup>1</sup> This article is not intended as, and does not constitute, legal advice. Nor is it intended as a self-help guide. Those needing to acquire a pipeline easement, or an easement of any kind, should consult a qualified attorney.

<sup>2</sup> *Golden West Baseball Company v. City of Anaheim* ("Golden West"), (1994) 25 Cal. App 4th 11, 34-35, 31 Cal. Rptr. 2d 378.

<sup>3</sup> *Golden West*, 25 Cal. App 4th at 34-35, 31 Cal. Rptr. 2d 378.

<sup>4</sup> *Colvin v. Southern California Edison Company*, ("Colvin"), (1987) 194 Cal. App. 3d 1306, 1312, 240 Cal. Rptr. 142. *Colvin* was overruled by statute, insofar as it held that an easement holder, whose interest in land was non-possessory, did not have an interest in real property, as defined in Civil Code § 846, and was not exempt from tort liability to third parties under Civil Code § 846, a point not relevant to the subject of this article.

<sup>5</sup> *Golden West*, 25 Cal. App 4th at 35-36, 31 Cal. Rptr. 2d 378.

<sup>6</sup> *Darr v. Lonestar Industries, Inc.* ("Darr"), (1979) 94 Cal. App. 3d 895, 900, 157 Cal. Rptr. 90. *Darr* was also overruled by statute – on the same point as *Colvin*, a point not relevant to this article. See *Hubbard v. Brown*, 208 Cal. App. 3d 691, 256 Cal. Rptr. 430, 435-436.

<sup>7</sup> See, e.g., *Buehler v. Reilly*, (1958) 157 Cal. App. 2d 338, 339-343, 321 P. 2d 128.

<sup>8</sup> See, e.g., *Pacific Gas and Electric Company v. Hacienda Mobile Home Park* ("PG&E"), (1975) 45 Cal. App. 3d 519, 523, 119 Cal. Rptr. 559. See also *Miller & Starr*, § 15.14, *Easements, Requirements for Creation*.



Notwithstanding the strict requirements of easement creation, California courts sometimes held that written or oral contracts created easements – even when the easement grantor and easement holder failed to comply with formal easement creation requirements. In *Zimmerman*, the court held that an easement was created over the seller’s real property by an unrecorded written contract that granted the purchaser an easement – even if the deed did not mention the easement.<sup>9</sup> In *Darr*, a right of entry permit from the State of California, which allowed the holder access to a strip of riverbed on state property to haul gravel, created an easement.<sup>10</sup> In *Colvin*, a landowner’s oral permission to a utility company to retain utility poles in a certain location that was outside of a previously established right of way, created an easement in the new location in favor of the utility company.<sup>11</sup>

**Creation of Easements by Contract.** Today, an easement may be created by contract, even if the contract does not include formal words of conveyance and is not recorded.<sup>12</sup> In *Golden West*, the court determined that a written contract between the Golden West Baseball Company (“GWC”) and the City of Anaheim (“the City”), created an easement, where the contract (1) was not recorded; (2) did not precisely describe the “leased premises,” (3) leased to GWC only the use of the stadium and 12,000 parking spaces on the ground level on game days, (4) gave GWC exclusive control only of GWC’s stadium offices; and (5) retained for the City the right to use and control the stadium at all other times. *Golden West*, 25 Cal. App. 4th at 30-34, 35-36, 31 Cal. Rptr. 2d 378.

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<sup>9</sup> *Zimmerman v. Young*, (1946) 74 Cal. App. 2d 623, 625-628.

<sup>10</sup> *Darr*, 94 Cal. App. 3d at 898-901, 157 Cal. Rptr. 90.

<sup>11</sup> *Colvin*, 194 Cal. App. 3d at 1309-1312, 240 Cal. Rptr. 142.

<sup>12</sup> *Golden West*, 25 Cal. App. 4th at 31, 35, 31 Cal. Rptr 2d 378. In *Golden West*, GWC had entered into a contract with the City for use of a stadium and parking facilities and office space. The contract was ambiguous. While it was denominated a “lease” and referred to “demised premises” and to GWBC as the “lessee,” it leased to GWBC only the sporadic “use” of the stadium and 12,000 parking spaces on the ground floor. The City retained control of the Stadium on all days other than game days. GWC contended that, under the “lease,” GWC had acquired a “lease interest,” i.e., exclusive control over all the stadium and parking facilities, and it sought to enjoin the City from leasing a portion of the parking lot to the LA Rams, for use as the Rams’ home office in Anaheim. *Golden West*, 25 Cal. App 4th at 30-34, 36-37.



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Holding that the contract **created an easement or an irrevocable license**, the Golden West Court stressed that courts today analyze the conveyance of property rights by applying contract principles:

“Arrangements between landowners and those who conduct commercial operations upon their land are so varied that it is increasingly difficult and correspondingly irrelevant to attempt to pigeonhole these relationships into “leases,” “easements,” “licenses,” “profits,” or some other obscure interest in land devised by the common law in far simpler times. Little practical purpose is served by attempting to build on this system of classification. Citations omitted. **“Modern decisions tend to construe leases and the rights and obligations ensuing therefrom in accordance with general contract principles.”** . . . . .

The agreement here granted certain rights and imposed certain duties on the parties. . . . **The contractual relationship between the parties must be analyzed based on the evidence and findings without regard to its classification under transactional common law concepts.**<sup>13</sup> (Emphasis added.)

**Pipeline Easement By Written Contract.** In accord with these authorities, an oil and gas producer in need of a pipeline easement, can enter into a written contract for such an easement with the landowner – taking care to adequately describe the property over which the easement is granted and the purpose of the easement.<sup>14</sup> However, the producer might first look to his oil and gas lease as a written contract that likely affords a pipeline easement. The following language is taken from a California oil and gas lease:

The **Lessee shall have the sole and exclusive right of** prospecting demised premises and drilling for, **producing, extracting, treating, removing and marketing, oil, gas, natural gasoline and other hydrocarbon substances** therefrom, **and to establish and maintain on said premises** such tanks, boilers, houses, engines and other apparatus and equipment, power lines, pipe lines, roads and other appurtenances **which may be necessary or convenient in the production, treatment, storage and/or transportation of any and all said products from** and on said property, **or property in the vicinity, operated by Lessee, or an assignee** or subsidiary Lessee.

(Emphasis added.)

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<sup>13</sup> Golden West, 25 Cal. App 4th at 36-37.

<sup>14</sup> A written contract for an easement must, of course, comply with all requirements of a contract. One wishing to enter into a written contract for an easement might consider consulting an attorney with expertise in oil and gas and real property contracts.



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Applying to this language the same contract principles that the court applied in Golden West, the oil and gas lessee and his assignees (collectively, “the lessee”), likely have an easement to perform various acts on the property – including installing, using and maintaining pipeline or pipelines, as may be necessary or convenient to produce, treat, store and/or transport oil, gas, natural gasoline and other hydrocarbon substances drilled, not only from the lease property, but also from any property in the vicinity that is also operated by the lessee.

The fact that the lease language does not specifically describe the location or boundaries of the pipeline easement does not impair its existence. As the court noted in Colvin:

Easements and licenses may, but need not, have definite boundaries, other than the boundaries of the servient tenements themselves. An easement granted in general terms, nonspecific as to its particular nature, extent or location, is . . . perfectly valid. It entitles the holder to choose a “reasonable location” and to use such portion of the servient tenement as may be reasonably necessary for the purposes for which the easement was created. The use actually made by the holder over a period of time fixes the location and the nature and extent of the use. (Citations omitted.) Such an easement necessarily carries with it not only the right, but also the duty to maintain and repair the structure or facility for which it was created.<sup>15</sup>

Since the oil and gas lease, to be valid, specifically describes the leased property, “the servient tenement,” the easement provision quoted above is likely sufficient, even if it does not specifically describe the legal parameters of the easement.

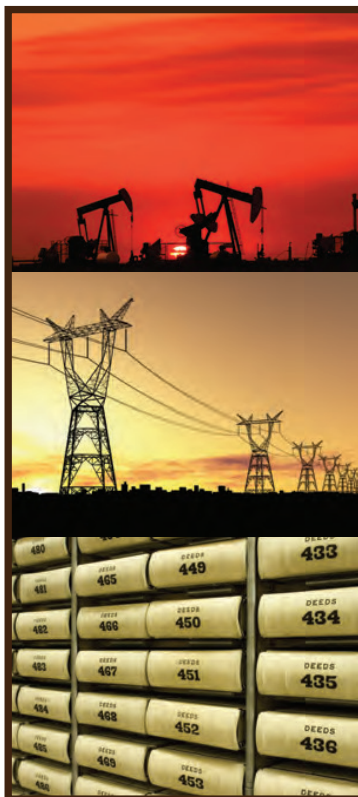
**Pipeline “Easement” By Oral Contract – (Irrevocable License).** A pipeline easement may also be created by oral agreement, under certain circumstances, as cases relating to irrevocable licenses *in non-oil and gas contexts* demonstrate.

**Licenses Are Revocable At Will.** A license is a written or oral agreement between a grantor and a third party, in which the grantor allows the third party to come onto his property to perform certain acts, (for example, to excavate for and remove gravel). A license does not confer on the third party any possessory interest in the land. It is a privilege, “personal” to the third party that cannot be assigned. A license is revocable at will: the grantor can revoke or terminate the license at any time.<sup>16</sup>

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<sup>15</sup> Colvin, 194 Cal. App. 3d 1312, 240 Cal. Rptr. 142.

<sup>16</sup> See Gravelly Ford Canal Co. v. Pope & Talbot Land Co., (1918) 36 Cal. App. 717, 737, 178 P. 155.



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**Oral Licenses Can Become Irrevocable, Equal to an Easement, in Certain Circumstances.** An oral license may become irrevocable – the equivalent of an easement – where a licensee, in reliance on an oral license, expends money or labor in improvements, such that terminating the license would be inequitable. In those instances, the licensor is estopped (prevented by the court) from revoking the license. In *Cooke v. Ramponi*, the California Supreme Court enjoined a defendant landowner from terminating an oral license, where the landowner gave the plaintiff oral permission to improve a road on the landowner’s property, then, after the plaintiff completed the improvements, barricaded the road and refused to allow the plaintiff to use it.<sup>17</sup> The Court applied the doctrine of equitable estoppel to prevent the licensor from perpetrating a fraud on the licensee, and held that the plaintiff had an easement or an irrevocable license. The Court explained:

Where a licensee has entered onto the land of another under a parol [oral] license and has expended money or labor in its execution, the license becomes irrevocable, and the licensee has a right of entry on the land for the purpose of maintaining the structure or his rights under the license *and the license will continue for so long as the nature of it calls for*.<sup>18</sup>

In *Higgins v. Kadjevich*, a court applied precisely this analysis to hold that plaintiffs had an irrevocable license to transport water through an existing irrigation pipeline on defendant’s land, where, in reliance on the defendant’s oral agreement, the plaintiff constructed an extension pipeline that connected to the existing pipeline on defendant’s land, and both parties had, for several years, used water from the pipeline extension to irrigate their respective acreages.

In other cases, the California Supreme Court has held an oral license to be irrevocable under the theory that the parties’ conduct amounted to an executed contract for the purchase and sale of an easement. In *Flickinger*, the California Supreme Court held that an irrevocable license was created where a landowner, gave the licensee permission to upgrade a ditch, then, claiming that his oral agreement was a “mere license,” revocable at will, damned up the ditch and refused to allow the plaintiff to take water from the ditch or to enter the landowner’s property to maintain the ditch, after the plaintiff, in reliance on the licensor’s oral permission, conducted a survey and excavated the irrigating ditch over the landowner’s property.

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<sup>17</sup> *Cooke v. Ramponi* (“*Ramponi*”) (1952) 38 Cal. 2d 282, 285-286, 239 P. 2d 638.

<sup>18</sup> *Ramponi*, 38 Cal. 2d at 286, 239 P. 2d 638 (citing *Stoner v. Zucker*, (1906) 148 Cal. 516, 520, 83 P. 808.)

<sup>19</sup> *Higgins v. Kadjevich* (“*Higgins*”), (1960) 186 Cal. App. 2d 520-524.

<sup>20</sup> *Flickinger v. Shaw* (“*Flickinger*”), (1890) 87 Cal. 126, 130-132, 25 P. 268.

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Pursuant to an oral agreement with the landowner of five year's standing, the licensee had previously maintained the ditch and used ½ of the water diverted by the ditch.<sup>21</sup>

The California Supreme Court held the oral license to be irrevocable, stating that the fully performed oral agreement was like a contract for the purchase and sale of an easement:

“[A] license may become an agreement on valuable consideration, *as where the employment of it must necessarily be preceded by the expenditure of money; and when the grantee has made improvements or invested capital in consequence of it, he has become a purchaser for a valuable consideration. Such a grant is a direct encouragement to expend money*, and it would be against all conscience to annul it as soon as the benefit expected from the expenditure is beginning to be perceived . . . [E]quity will execute every agreement for the breach of which damages may be recovered, where an action for damages would be an inadequate remedy.”<sup>22</sup> (*Emphasis added.*)

Other California cases hold that a fully performed oral agreement will convey equitable title to the easement agreed upon, and that the right is enforceable by injunction. For example, in *Wilkes v. Brady*, the court held that plaintiffs acquired a roadway easement over the defendant's land, and enjoined the defendant's interference with plaintiff's use of the roadway, where the defendant orally agreed to allow the plaintiffs to enter his property to construct and maintain a roadway, at their own expense and for their use, in exchange for grazing rights on their land, and where the plaintiffs fully performed the agreement.<sup>23</sup> In *Stepp v. Williams*, the court enjoined a grantor's successor in interest from interfering with the plaintiff's right to use water from the grantor's property, where, pursuant to an oral agreement with the grantor, the plaintiff had constructed a dam and a ditch on the grantor's property and had maintained both for 30 years.<sup>24</sup>

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<sup>21</sup> *Flickinger*, 87 Cal. at 125-128, 130-131.

<sup>22</sup> *Flickinger*, 87 Cal. at 130-132. The California Supreme Court's quote is from a case decided by the Supreme Court of Pennsylvania, *Rerick v. Kern*, 14 Serg. & R 257, 16 Am. Dec. 497, 1826 WL 2256 (1826), in which a landowner permitted a miller to construct a mill on the landowner's property, then revoked his permission when construction was completed, saying the miller had only a revocable license.

<sup>23</sup> *Wilkes v. Brady*, (1927) 84 Cal. App. 365, 368-371, 258 P. 108.

<sup>24</sup> *Stepp v. Williams* (“Stepp”), (1921) 52 Cal. App. 237, 241-259, 198 P. 661.

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**Element of Necessity, Benefit, Productivity.** These cases are imbued with elements of necessity or of benefit to the landowner or to the community. In *Ramponi*, the roadway was the only means of access to the plaintiff licensee's otherwise landlocked property.<sup>25</sup> In *Flickinger*, the irrigating ditch had been used by and had benefited the landowner.<sup>26</sup> In *Stepp*, the plaintiff's lands were dry and barren, and could not sustain crop growth without artificial irrigation. At the same time, the licensor's lands were too wet, and the dam and ditch helped drain the property.<sup>27</sup> In *Wilkes*, the licensor had also used the roadway constructed by the licensee for three years.<sup>28</sup>

**Duration of An Irrevocable License.** Once an oral license becomes irrevocable, its duration is co-extensive with the need for the easement. In *Ramponi*, the California Supreme Court held that the licensee, who resided on landlocked property, had a right to use the roadway he acquired by irrevocable license "and the license will continue for so long as the nature of it calls for."<sup>29</sup> In *Wilkes*, the Court held that the licensee's irrevocable interest in the roadway to his property, over the licensor's land, would continue for as long as needed.<sup>30</sup> In *Stepp*, the court held that the plaintiff's construction and 30 year maintenance of a dam and ditch under an oral agreement with the previous landowner constituted an irrevocable license – enforceable, 30 years later, against the licensor's successor in interest – and enjoined the licensor's successor from interfering with the plaintiff's right to take the water and to enter the landowner's property to maintain the ditch and dam.<sup>31</sup>

**Conclusion:** An oil and gas producer, in need of a pipeline easement, may find an easement grant in his oil and gas lease. If none can be found there, or if he requires an easement on a property over which he does not have a lease, he can negotiate to obtain a pipeline easement by written contract. (Be prepared. Pipeline easements do not come at bargain prices.)

Obtaining an easement by oral agreement, while possible, is not recommended. In the irrevocable license cases, the licensee's relationship with the licensor was of long standing – from three years to thirty years. The cases are also imbued with necessity, benefit to the licensor and/or community, productivity and fraud by the licensor on the licensee –variables on which the validity of the pipeline easement would depend. Moreover, the producer would have to spend large sums of money to install a pipeline that a court might order removed if the court does not declare the oral agreement to be an irrevocable license. This highlights the probability of a lawsuit to adjudicate the revocability or irrevocability of the oral license.

*Ms. Cruz can be reached at [ncruz@lunaglushon.com](mailto:ncruz@lunaglushon.com).*

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<sup>25</sup> *Ramponi*, 38 Cal. 2d at 288.

<sup>26</sup> *Flickinger*, 87 Cal. at 130-131.

<sup>27</sup> *Stepp*, 52 Cal. App. 239, 242-249.

<sup>28</sup> *Wilkes*, 84 Cal. App. 368.

<sup>29</sup> *Ramponi*, 38 Cal. 2d at 286, 239 P. 2d 638.

<sup>30</sup> *Wilkes*, 84 Cal. App. at 370.

<sup>31</sup> *Stepp*, 52 Cal. App. at 256-257, 198 P. 661.



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## Legislative Update

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

### **SENATE BILL 4 INTERIM REGULATIONS GO INTO EFFECT**

On January 1, interim regulations by the California Division of Oil, Gas and Geothermal Resources (DOGGR) for compliance with the recently passed Senate Bill 4 (which provides oversight regulations of onshore well stimulation) went into effect until permanent regulations are implemented in January 2015. The Division of Oil, Gas, and Geothermal Resources released the interim mandates, which it refers to as "emergency regulations."

Also as part of SB 4 compliance, DOGGR released the proposed permanent regulations on November 15, 2013 and they were available for public comment for 60 days\*. The regulations are designed to protect health, safety, and the environment, and supplement existing strong well construction standards. This effort is the product of a dozen public meetings to both solicit ideas on what the regulations ought to include and to receive comments on an unofficial "discussion draft" of regulations; extensive research of other states' regulations and of scientific studies; and input from other regulatory agencies, the environmental community, and the oil and gas industry.

Senate Bill 4 also requires DOGGR to prepare an Environmental Impact Report (EIR) to analyze the impacts of well stimulation treatments. As part of the public comment/input process, they asked for suggestions and content of the EIR from DOGGR. There were five EIR Scoping Meetings held throughout the state during January 2014.

### **HECKLING AT PUBLIC COMMENT FORUM**

On a personal note, I attended the DOGGR SB 4 Proposed Permanent Regulations public comment forum in Long Beach earlier this month and read a statement endorsing the proposed regulations, along with supporting the full development of the Monterey Shale. I was interrupted with boos and hisses from anti-frackers during my comments.

Additionally, Olman Valverde, when making the same statement of support two days later at the DOGGR Bakersfield public comment forum, was also interrupted.

It's crazy out there. However, this confirms to emphasize the need to inform the mis-informed. Hopefully the completion of the DOGGR EIR next year will assist in this endeavor. Unfortunately for some, it will not make a difference.

### **CAMPAIGN LAUNCHED TO PUT OIL TAX ON NOVEMBER BALLOT**

San Francisco Bay Area hedge fund manager Tom Steyer has launched a statewide campaign, aimed at prompting action by state lawmakers, to impose a new extraction tax on oil produced in California. Steyer said California imposes only a 14-cent per barrel fee, even when property, income and corporate taxes are factored in, the state collects far less per barrel than states such as Texas and Alaska – a claim that oil industry representatives disputed. Tupper Hull, spokesman for Western States Petroleum Assn., said an industry-supported analysis done two years ago found that oil companies already pay more than \$6 billion a year in taxes to state and local governments. Hull said Steer's assertion that the industry is under-taxed is "erroneous" and that imposing a new extraction tax would result in a decline in oil production in California and the loss of jobs. Recent legislative efforts to impose an extraction fee also have failed. Measures to impose a severance tax have gone to the ballot twice since 1981, and have been defeated both times.

### **GOVERNOR BROWN REJECTS CALL FOR OIL EXTRACTION TAX**

Gov. Jerry Brown on Thursday rejected calls for a tax on companies that extract oil in California, after billionaire environmentalist Tom Steyer said last month that he would ramp up a campaign for such a tax in the state Legislature. "I don't think this is the year for new taxes," the Democratic governor told reporters at the state Capitol.


Brown, who is preparing for a likely re-election bid this year, spent much of 2012 campaigning for his ballot initiative to raise taxes, Proposition 30, and its passage is a major reason he is enjoying a budget surplus this year. "I went up and down the state campaigning for Proposition 30," Brown told reporters after unveiling his annual budget plan. "I said it was temporary. It is going to be temporary. And I just think we want to do everything we can to live within our means before going back again and trying to get more taxes."

### **KERN COUNTY CONDUCTS OWN EIR**

Officials in Kern County, home to the vast majority of oil drilling operations in the state, has issued an "Initial Study/Notice

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of Preparation" of the EIR under the California Environmental Quality Act (CEQA) as part of a process to amend its ordinance covering drilling activities. Stakeholders believe the county's EIR can serve as a model for the California Division of Oil, Gas & Geothermal Resources (DOGGR) as it prepares a statewide EIR for fracking and other well stimulation treatments. Kern County is conducting the new EIR and drilling rule amendments in a response to a January application by the California Independent Petroleum Association, the Independent Oil Producers Association, and Western States Petroleum Association (WSPA). These industry organizations hope that the county's EIR process will become a model for similar evaluations in other parts of the state.

### **LEGISLATORS ASK GOV. BROWN FOR A MORATORIUM ON HYDRAULIC FRACTURING**

Nine California Legislators on January 7 sent a letter to Governor Jerry Brown asking that he issue an executive order to prohibit the Division of Oil, Gas, and Geothermal Resources (DOGGR) from allowing hydraulic fracturing in the state until health and environmental concerns are addressed. There's little indication Brown would embrace a moratorium. In his signing statement for SB 4, he said the legislation "establishes strong environmental protections and transparency requirements" for fracking and other extraction methods.

### **SCIENTISTS SEND LETTER TO GOVERNOR PRAISING HYDRAULIC FRACTURING**

Twenty-one scientists sent a letter last December to Governor Brown praising the use of hydraulic fracturing in California by oil companies and the new regulations on the procedure put in place that, they believe, will allow for a safe way to develop the "extraordinary" potential of the state's shale oil reserves, improve the economy, create jobs, and reduce dependence on foreign oil. "In our research, we have found nothing to suggest that shale development poses risks that are unknown or cannot be managed and mitigated with available technologies, best practices and smart regulation," reads the Dec. 18 letter from the scientists. "The economic benefits that can be derived from the expanded development of shale oil and gas reserves in California are potentially significant, leading to more jobs, greater economic growth, lower energy bills, and cleaner air." The letter further states, "Although some have called for a ban on hydraulic fracturing, we see no merit in that course of action, provided the right regulatory approach is followed. In our view, the regulations currently being drafted by the California Department of Oil, Gas, and Geothermal Resources (DOGGR) certainly meet that requirement." The letter is signed by leading geological, petroleum engineering, earth sciences and engineering scientists from some of the leading universities in the country, including Cornell, Penn State, UCAL-Berkeley, Syracuse, Texas Tech and Texas A&M.

### **SANTA BARBARA SUPERVISORS CONSIDERING SEVERANCE TAX**

In a sign of the battles the oil and gas industry continues to fight, the Santa Barbara County Board of Supervisors is considering placing a severance tax on the ballot for 2014. Currently being deliberated is for the tax to be administered as a business license tax set at \$1 per barrel for all producing wells above 5 barrels per day. There would be no price floor and no sunset clause. Included would be an annual adjustment for inflation. The estimated \$3.5 million projected revenue included oil produced from both onshore and state waters (3 miles).

### **EPA REQUIRES PUBLIC REPORTS OF CHEMICALS DUMPED INTO OCEAN**

The Environmental Protection Agency Thursday established a new requirement for oil and gas operations off the Southern California coast to publicly report chemicals dumped directly into the ocean from offshore fracking operations. The reporting requirement will become effective March 1st.

Approximately half the oil platforms in federal waters in the Santa Barbara Channel discharge all or a portion of their wastewater directly to the ocean, according to a California Coastal Commission document. This produced wastewater contains all of the chemicals injected originally into the fracked wells, with the addition of toxins gathered from the sub-surface environment.

### **LOS ANGELES CITY ATTORNEY SUES ALLENCO**

The Los Angeles city attorney has filed a lawsuit to stop Allenco Energy Inc. from reopening in South Los Angeles, accusing the company of ignoring years of evidence that fumes from its oil fields were sickening residents of the surrounding neighborhood.

City Attorney Mike Feuer's investigation found that Allenco willfully disregarded violation notices issued by oversight agencies and that regulators did not move forcefully to enforce their numerous and repeated citations.

Legislative Update  
continued on page 18

Legislative Update  
continued from page 17

As a result of lax practices, Allenco exposed University Park neighbors "to noxious fumes and odors which have resulted in adverse health effects on community members in the form of severe headaches, nausea, nosebleeds, chronic fatigue and respiratory ailments including asthma," says the complaint, filed in Los Angeles County Superior Court. "No community should have to live this way, with windows shut, children kept indoors to protect their health, and neighbors seeking relief from intolerable conditions."

The city's 27-page complaint says Allenco still hasn't upgraded its fire suppression systems, complied with water quality control requirements, properly inventoried hazardous materials or filed a hazardous materials response plan.

Allenco voluntarily halted operations in November at the request of U.S. Sen. Barbara Boxer (D-Calif.), after a team of health and environmental safety authorities were sickened during a tour of the site Oct. 24.

Feuer's office is seeking a permanent injunction against Allenco's operation, putting the city at odds with the South Coast Air Quality Management District, which is working with the company on a plan to reopen this winter. Air district spokesman Sam Atwood said the district will cooperate with the city attorney's office. On Jan. 25, 2011, fumes from Allenco overwhelmed the adjoining Doheny Campus of Mount St. Mary's College. Thirteen people were treated for nausea, asthma and a nosebleed, college officials said.

Allenco has declined to comment pending an opportunity to review the complaint.

\*The California Department of Conservation (DOC) said there will likely be an additional 45-day public comment period later in 2014.



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Education Chair - Vacant

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### February 2014

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#### **Fundamentals of Land Practices with Optional RPL Exam**

When: February 10-11, 2014  
Where: Fort Worth, TX  
Continuing Education Credits: 7.0  
CPL Ethics Credits: 1.0

#### **Negotiations Seminar (NEW)**

When: February 13, 2014  
Where: Oklahoma City, OK  
Continuing Education Credits: 5.0  
Ethics Credits: 0.0

#### **Pooling Seminar**

When: February 14, 2014  
Where: The Woodlands, TX  
Continuing Education Credits: 5.0  
Ethics Credits: 0.0

#### **WI/NRI Workshop**

When: February 15, 2014  
Where: University of Tulsa, OK  
Continuing Education Credits: 6.0  
Ethics Credits: 0.0

#### **RPL./CPL Exam Proctor**

When: February 21, 2014  
Where: Jackson, MS  
Continuing Education Credits: 0.0  
Ethics Credits: 0.0

#### **Utah Land Institute (NEW)**

When: February 21, 2014  
Where: Park City, UT  
Continuing Education Credits: 7.0  
Ethics Credits: 0.0

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

When: February 25-28, 2014  
Where: Tulsa, OK  
Continuing Education Credits: 18.0  
Ethics Credits: 1.0

#### **Field Land Practices with Optional RPL Exam**

When: February 27-28, 2014  
Where: Boardman, OK  
Continuing Education Credits: 13.0  
Ethics Credits: 2.0

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### March 2014

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#### **Pooling Seminar**

When: March 3, 2014  
Where: Pittsburgh, PA  
Continuing Education Credits: 5.0 NO ETHICS

#### **National Business Institute FRAC LAW: From Land Contract Negotiations to Environmental Disputes**

When: March 5, 2014  
Where: Ventura, CA  
Continuing Education Credits: 6.0 NO ETHICS

#### **National Business Institute FRAC LAW: From Land Contract Negotiations to Environmental Disputes**

When: March 6, 2014  
Where: Bakersfield, CA  
Continuing Education Credits: 6.0 NO ETHICS

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

When: March 19-22, 2014  
Where: San Antonio, TX

#### **RPL./CPL Exam Proctor**

When: March 6, 2014  
Where: Salt Lake City, UT  
Continuing Education Credits: 0.0  
Ethics Credits: 0.0

#### **Due Diligence Seminar**

When: March 7, 2014  
Where: Williamsport, PA  
Continuing Education Credits: 5.0  
Ethics Credits: 0.0

#### **RPL./CPL Exam Proctor**

When: March 14, 2014  
Where: Evansville, IN  
Continuing Education Credits: 0.0  
Ethics Credits: 0.0

#### **WI/NRI Workshop**

When: March 28, 2014  
Where: Pittsburg, PA

*Educational corner  
continued on page 20*

Continuing Education Credits: 18.0  
Ethics Credits: 1.0

**Mining and Land Resources Institute**

When: March 27-28, 2014  
Where: Reno, NV

Continuing Education Credits: 0.0  
Ethics Credits: 0.0

Continuing Education Credits: 6.0  
Ethics Credits: 0.0

**Oil and Gas Land Review, RPL/CPL Exam**

When: March 31-April 3, 2014  
Where: Tyler, TX

Continuing Education Credits: 18.0  
Ethics Credits: 1.0

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If you have questions or would like more information, please contact AAPL's Director of Education Christopher Halaszynski at (817) 231-4557 or [chalaszynski@landman.org](mailto:chalaszynski@landman.org).

#### General Credit Courses

[#101](#) Due Diligence for Oil and Gas Properties  
Credits approved: 10 CPL/RPL  
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[#102](#) The Outer Continental Shelf  
Credits approved: 5 CPL/RPL  
\$37.50

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

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

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

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

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

#### Ethics Credit Courses

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

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

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

## SEMINAR OVERVIEW

### Landowners' Rights, Royalty Negotiations and Environmental Remedies in Shale Gas and Oil Extractions

Over the past few years, the U.S. shale gas and oil production has become a major growth industry. This unique course offers practical tips for helping landowners take advantage of the industry boom in negotiating with energy contractors. Get an overview of the extraction process and a detailed analysis of the key provisions of lease contracts and royalty agreements. Explore environmental law compliance issues and common legal disputes. Learn what you need to know now - register today!

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- Walk through the extraction process and spot red flags along the way.
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- Investigate key issues in cooperative subsurface oil and gas development.
- Review current hydraulic fracturing lease challenges and learn how to prevent and handle lease disputes.
- Explore common extraction site contamination issues, their consequences, and pre- and post-fact legal remedies.
- Hear about the latest case law and industry trends.
- Review environmental concerns, liability issues and remedies unique to hydraulic fracturing in California.

#### WHO SHOULD ATTEND

This basic-to-intermediate level seminar is designed for attorneys. It will also benefit real estate professionals, oil and gas industry professionals, developers, surveyors, mortgage lenders, and paralegals.

#### CREDIT INFORMATION

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## FRAC LAW: From Land Contract Negotiations to Environmental Disputes

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## FRAC LAW: From Land Contract Negotiations to Environmental Disputes

» What You Need to Know about the Key Legal Issues  
in Oil and Gas Extraction

Ventura, California — March 5, 2014  
Bakersfield, California — March 6, 2014

#### Presented By

K. Eric Adair  
Peter L. Candy  
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See inside for details!

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## SEMINAR OUTLINE

- I. **Hydraulic Fracturing Introduction**  
9:00 - 9:45 *Written and Presented by Daniel R. Torrey, PhD in Ventura and Bakersfield*
  - A. Overview
  - B. Facilities Construction
  - C. Processing
  - D. Produced Water Management
  - E. Overview of Environmental Issues
  - F. Overview of Community/Regulatory Issues
- II. **Recent Regulatory Developments**  
9:45 - 10:30 *Written and Presented by Peter C. Galt, Ventura and Bakersfield*
  - A. Senate Bill (SB) 675
  - B. DDCGR Regulations
  - C. CCA
  - D. Local Land Use Controls
- III. **Cooperative Subsurface Oil and Gas Development**  
11:00 - 12:00 *Written and Presented by John Quirk in Ventura and Bakersfield*
  - A. Relevant Fundamentals
    1. The Rule of Capture
    2. The Doctrine of Correlative Rights
    3. Person Having the Rule of Capture and the Doctrine of Correlative Rights
  - B. Mineral-Related Entry, Use and Improvement
    1. Tract-Specific Mineral-Related Entry, Use and Improvement
    2. The Rule of Apportionment
    3. The Doctrine of Accommodation
  - C. An Argument for "Cooperative" Subsurface Oil and Gas Development
    1. The "Overflight Trespass" Cases
    2. Evaluating Cooperative Subsurface Coal Mining Rights in Appalachia After Mississippian into the Apex Rule
    3. *Confidential Favor* - Plaintiff Can Drill a Well Through Another Lessee's Separate Leasehold
    4. The General Grant of Minerals Includes a Grant of Geothermal Rights, Including Steam Traction
- IV. **Lease Challenges and Disputes: Interpretation of Oil and Gas Leases in Favor of the Lessor**  
1:00 - 2:00 *Written and Presented by John Quirk in Ventura and Bakersfield*
  - A. California Decisions Suggesting Interpretation in Favor of Lessor
    1. San Mateo Community College District
    2. Lough v. Coal Oil
  - B. Supported Rule Not Supported by California Precedent
  - C. Supported Rule Not Supported by the Treatise Used to Support It
  - D. Supported Rule Superfluous to Deciding the Two Cases Citing It
- V. **First-Ever Comprehensive Study of Environmental Impacts of Surface Hydraulic Fracture Jobs**  
2:00 - 3:00 *Written and Presented by Donald J. Torrey, PhD in Ventura and Bakersfield*
  - A. Regulatory Basis
    1. Regulatory Basis
    2. Specific Characteristics
      - C. Environmental Measurements
        1. Well Integrity
        2. Water
        3. Air
        4. Seismicity and Ground Movement
        5. Noise and Vibration
      - D. Utility of the Study
- VI. **Environmental Concerns and Remedies**  
3:15 - 4:30 *Written and Presented by K. Eric Adair in Ventura and Bakersfield*
  - A. Statutory and Regulatory Authority of California and Federal Regulation
    1. Water Quality
      2. Water Supply
      3. Wastewater Management
      4. Air Quality
      5. Traffic
      6. Seismicity
      7. Surface Impacts
      8. Public Health
      9. Others
    - B. Landowner Liability
      - C. Corporate Liability
      - D. Preventive Contract Clauses

\*If needed, the above agenda may be changed to best accommodate all of our attendees.

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## OUR DISTINGUISHED FACULTY

**K. ERIC ADAIR** is a partner at the law firm of Hiron Gavelle & Adair, LLP with more than 20 years of litigation experience. Mr. Adair represents clients in the oil and gas industry, including energy developers, producers, and lessees. He has extensive experience in oil and gas lease interpretation, oil and gas lease enforcement, and oil and gas lease litigation. He has also represented clients in oil and gas lease disputes, including oil and gas lease enforcement, oil and gas lease interpretation, and oil and gas lease litigation. He has also represented clients in oil and gas lease disputes, including oil and gas lease enforcement, oil and gas lease interpretation, and oil and gas lease litigation. He has also represented clients in oil and gas lease disputes, including oil and gas lease enforcement, oil and gas lease interpretation, and oil and gas lease litigation.

**DANIEL R. TORREY, PH.D.** is a professor at the University of California, Santa Barbara, where he has been teaching since 1980. He has also been a visiting professor at the University of California, Los Angeles, and the University of California, Berkeley. He has also been a visiting professor at the University of California, San Diego, and the University of California, San Francisco. He has also been a visiting professor at the University of California, Santa Cruz, and the University of California, Merced. He has also been a visiting professor at the University of California, Riverside, and the University of California, San Jose. He has also been a visiting professor at the University of California, Santa Barbara, and the University of California, Los Angeles. He has also been a visiting professor at the University of California, Berkeley, and the University of California, San Diego. He has also been a visiting professor at the University of California, San Francisco, and the University of California, Santa Cruz. He has also been a visiting professor at the University of California, Merced, and the University of California, San Jose. He has also been a visiting professor at the University of California, Riverside, and the University of California, San Jose.

**JOHN QUIRK** is a member of the law firm of Bright and Brown, where he represents both mineral owners/lessors and mineral lease operators in the negotiation and performance of oil and gas leases, and other agreements unique to the exploration and production phases of the oil and gas industry. Mr. Quirk is considered one of the state's leading practitioners in the area of oil and gas title. He is a frequent speaker to oil and gas industry gatherings and a frequent contributor to industry publications. Mr. Quirk was presented a Special Award-Education at the ABA's 2008 convention, in recognition of his involvement in the careers of the law and professional community. He is a regular contributor to the Los Angeles Association of Professional Landmen (LAPL).

**DANIEL R. TORREY, PH.D.** is the principal at Garcia Exotic, and an expert in water and energy. Dr. Torrey also works with the environmental aspects of all types of energy and energy development. He was awarded the prestigious "2009 Environmental Energy and Energy Development" award by the Environmental Energy Research Institute (EERI) for his work in the field of energy and energy development. He has also been awarded the "2009 Environmental Energy and Energy Development" award by the Environmental Energy Research Institute (EERI) for his work in the field of energy and energy development. He has also been awarded the "2009 Environmental Energy and Energy Development" award by the Environmental Energy Research Institute (EERI) for his work in the field of energy and energy development.

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- Feb. 25 Medical Estate Recovery: What Can They Get? (65409)
- Feb. 26 Foreign Discovery for Civil Litigators (65149)
- March 4 Ethics of Meetings and Videoconferencing (65275)
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