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The Override

Every Landman Wants One!

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Los Angeles Association of Professional Landmen

Presidents Message

Paul Langland, Esq., President
Independent

As many of you know, I have been working for E&B Natural Resources for the last several years and on the Hermosa Beach Oil Recovery Project the last two years. The City of Hermosa Beach recently released the Draft Environmental Impact Report, a cost benefit analysis and a Health Impact Assessment (HIA) for the project.

We are preparing comments on all three documents, but I wanted to share a portion of the HIA to show you where the state of gaining approval has gone in this world of internet experts and voodoo science.

The following excerpt is from the HIA:

"The disruption in social cohesion associated with the community vote on the proposed project may create negative health effects. Because all adult residents will have an opportunity to vote, the impact may be community-wide. It is possible that the elderly of the community are more vulnerable to impacts on social cohesion as they rely more on social support networks for their health needs."

As we said in a follow up ad, "Yes, the HIA is suggesting that an election could be hazardous to your health."

I try not to make these newsletters to "preachy", but this type of social science, wherein it tries to construct new standards to block projects, has become too commonplace. Regulatory agencies succumb to these types of reviews, which go beyond what the California Environmental Quality Act (CEQA), to placate their constituents.

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A land drilling rig in Shengli Oil,China.

Inside This Issue:

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Meeting Luncheon Speaker

Tracy K. Hunckler, Esq., is a founding partner with the law firm of Day Carter & Murphy LLP. She practices oil and gas law and natural resources litigation. Tracy frequently advises clients on avoiding litigation and resolving disputes short of litigation. Tracy represents the firm's clients before all regulatory bodies [federal, state, counties and local]. Her litigation experience includes: title disputes; surface access issues; well abandonment obligations; royalty issues; disputes between operators/non-operators; pipeline issues; condemnation; breaches of joint operating, farm-outs/ins, area of mutual interest, consulting and confidentiality agreements; and taxation matters.

Opinionated Corner

Cliff Moore
Independent
Chapter Secretary

During These Pressing Times

In the face of surmounting pressure to get the Middle East and the Far East geo thermo sniffers out of our back pockets, "our" meaning the middle class which supports the base economy of America, "America" being a euphemism for the United States, the U. S. Congress is about to pass a debt ceiling bill which raises the amount of money we are allowed to borrow from foreign investors while trying to maintain our world credit rating which amounts to smiling and waving while caught in a traffic jam when the gas gauge is on empty. It's a good front but it won't put food on the table.

The talk on the floor is when, not if, we pass this referendum, in order to keep up the pretense of being solvent, we need to show some intent with this new money. The GOP is behind raising the once hotly debated Keystone XL Pipeline issue as a contingency, a piggy-back so to speak. The Keystone XL Pipeline Project has behind it the creation of jobs within the many communities it crosses while it is being built, and the need for maintenance workers and overseers who will be posted strategically along the stretch of it after it is completed.

The Keystone project will help free up the amount of crude that gets stuck in wait mode in the Midwest because of an oil bottleneck much like the aforementioned traffic jam. We cannot get the oil out fast enough to the refineries outside of the North Dakota area for processing and it is creating a bottleneck. The local area plants are running at maximum. There is no way they can process all the product coming from the Bakken Canadian Shale.

The Keystone XL Project is but one major crude transportation vehicle set for operations in the near future. The Eastern Gulf Crude Access Project along the eastern United States will help move more product -- not as much because it is not as large as the Keystone XL pipeline. But all the help we can get is appreciated, if not necessary. The Eastern Gulf Pipeline is scheduled to be on line in the near future and, yes, it will alleviate some of the transportation problems. However, the Keystone XL is the mother of all pipelines to this day.

Every day we let this project sit we subject ourselves, meaning the middle class economy supporters, to the outrageous price manipulating and product waste of an industry, in the worldwide sense, that could use a hand slap. Mother Superior, get in here. The GOP's plan is to set the country's direction toward true solvency and not a house of cards.

I agree with the naysayers it will take a long time. But, and here is where I differ with the pundits of negativity, we have to start now by supporting this Keystone pipeline, which is synonymous with job growth, as part of a fifteen year plan of which we are only in the 3rd year.

If we keep steady and pay our bills when we make them; we shore up our loose ends; we get the heck out of as many countries' civil wars as we can; we support the oil and gas industry's ability to create and innovate; and we support as well as search out new sustainable energy sources for the future, we can become the new America which will make me proud to walk five miles to school and back. Uphill. Both ways.

LAAPL Call for Annual Dues

Sarah Sanchez-Downs, RPL
Treasurer

Per Chapter by-laws, a Notice for Dues will be sent out to LAAPL Chapter Members. Renewal is $40.00; upon receipt please send your renewal notices along with your payment as follows:

Sarah Downs, RPL
LAAPL Treasurer
Downchez Energy, Inc.
419 Main Street #357
Huntington Beach, Ca 92648

Presidents Message
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These constituents manipulate any subject by either making things up, "E&B is (pick your choice), drilling in the ocean, going to cause earthquakes, will cause cancer, ad nauseam, or they will cloud the facts to meet their goals. And, for the most part, they are not held to the truth of their missives.

As I said in an earlier newsletter, perception is reality. If you state something to be true and it's reported in any medium, it gains traction to the point where it's very difficult to counter the statement. Also, reporters are always looking for controversy, so that the mainstream (or what passes for mainstream) media will regurgitate these types of claims to sell newspapers or electronic bytes and thus spread inaccuracies.

In the end, we take the hit, recover, and work to get the true facts to those willing to listen.

On a brighter side, we have started to publish the Los Angeles Basin Geological Society's luncheon program notice. To have excellence in land, one needs to have an understanding of the other professionals that make up this great industry. I hope that all of you take the time to periodically attend these lunches, not only to educate yourselves on the hard sciences, but also to meet the geologists, geophysicists and engineers that attend these meetings. The lunch on March 27, should be of special interest to all men..."Unraveling the Geologic History of Mars".

Have a great Spring Break!

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. We regret if we had LAAPL friends who attended and we were deficient in recording their attendance.

2012—2013 Officers & Board of Directors

Paul Langland, Esq.
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Independent
310-997-5897

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

Jason Downs, RPL
Vice President
Breitburn Management Company LLC
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Cliff Moore
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Mike Flores
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Luna Glushon
310-556-1444

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OXY USA Inc., LA Basin Asset
562-495-9373

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TBD

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

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

Chapter Board Meetings

Cliff Moore
Independent
Chapter Secretary

LAAPL and LABGS met for a joint luncheon at the Grand in Long Beach. The LAAPL Board of Directors and Committee Chairs did not meet as there was no new official business to discuss at that time.

The Board of Directors and Committee Chairs will hold their next meeting at the Petroleum Club in Long Beach in the same room as our luncheon on March 27, 2014 right after the guest orator has spoken. We encourage members to attend so you can see your Board in action.

Call for Golf Chair

Our Chapter President is currently looking to fill the LAAPL's Golf Chair, which handles the annual Michelson Golf Classic which benefits the R. M. Pyles Boys Camp.

Please contact Paul Langland, Esq., Chapter President, at langlandlaw@gmail.com or 310-997-5897 for further details.

Scheduled LAAPL Luncheon Topics and Dates

March 20th

Tracy K. Hunckler, Esq., Partner

Understanding SB4: What's In It For You As A Land Professional?

May 15th
TBD
Officer Elections

September 18th
TBD
Oct 22nd – 24th
West Coast Landmen's Institute
Las Vegas, NV

November 20th
TBD

Treasurer's Report

Sarah Sanchez-Downs, RPL
Treasurer
Downchez Energy, Inc.

As of 4/1/2009, the LAAPL account showed a balance of	**$13,488.02**
Deposits	**$ 5,215.00**
Total Checks, Withdrawals, Transfers	**$ 300.00**
Balance as of 4/30/2009	**$ 18,403.02**
Merrill Lynch Money Account shows a total	**$ 11,096.90**

New Members and Transfers

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

Maya Grasse
Attorney
Alston & Bird LLP
333 S. Hope St. 16th Floor
Los Angeles, CA 90071
(213) 576-2526

David Ossentjuk
Partner/Attorney
Ossentjuk & Botti
2815 Townsgate Rd. Ste. 320
Westlake Village, CA 91361
(805) 557-8081

John Wolcott
Member-Manager
Wolcott, LLC
729 Bookcliff Ave.
Grand Junction, CO 81501
(970) 241-7146 x3087

Lawyers' Joke of the Month

Jack Quirk, Esq.
Bright and Brown

As a bagpiper, I play many gigs. Recently I was asked by a funeral director to play at a graveside service for a homeless man. He had no family or friends, so the service was to be at a pauper's cemetery in the Nova Scotia back country.

I got lost and, being a man, I didn't ask for directions. I finally arrived an hour late and saw the funeral director had evidently gone and the hearse was nowhere in sight. There were only the diggers left and they were eating lunch. I went to the side of the grave and looked down and the vault lid was already in place. I didn't know what else to do, so I started to play. The workers put down their lunches and began to gather around. I played out my heart and soul for this man with no family and friends.

I played like I've never played before for this homeless man. And as I played "Amazing Grace", the workers began to weep. They wept, I wept, we all wept together. When I finished, I packed up my bagpipes and started for my car. Though my head was hung low, my heart was full.

As I opened the door to my car, I heard one of the workers say, "I never seen nothing like that before and I've been putting in septic tanks for twenty years."

Los Angeles Association of Professional Landmen

2014 – 2015 Call for Officer Nominations

Scott Manning, CPL of BreitBurn Management Company, as LAAPL's Nominations Chair, is seeking out qualified candidates for officers. The officers will serve from July 1st, 2014 – June 30th, 2015. All qualified members interested in submitting their names as candidates are encouraged to contact Scott at 213-225-5900 or smanning@breitburn.com. Nominations will also be accepted from the floor at the March 20, 2014, regular meeting.

Please be certain your candidate is interested in running prior to submission to the Nominating Committee. Officers will be elected by a vote of membership in attendance at the May 16, 2013, chapter meeting held at the Long Beach Petroleum Club.

President[1] — Jason Downs, RPL, BreitBurn Management Company

Past President[2] — Paul Langland, Esq., Independent

OFFICE	CANDIDATE
Vice President	☐ Ernest Guadiana, Esq.
	☐ _____
Secretary	☐ Cliff Moore, Independent
	☐ _____
Treasurer	☐ Sarah Downs, RPL
	☐ _____
Director	☐ B. Scott Manning, CPL
	☐ Randy Taylor, RPL
	☐ _____
Director	☐ Paul Langland, Esq., Independent[3]
	☐ Joe Munsey, RPL
	☐ L. Rae Connet, Esq.
	☐ _____

[1]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.
[2]Per Article 8 (2) the outgoing President shall serve as Past President.
[3]Per Article 8 (2) the outgoing President shall serve as Director.

Royalty Allocation Arrangements and Production Sharing Agreements for Horizontal Wells©

Jon R. Ray[1]
Winstead PC
2013 Annual Oil and Gas Seminar
Fall, 2013

Ed. Notes: The author wishes to emphasis since this article was written/published last fall there have been several significant Texas developments in the concept of "allocation wells."

Even the world's second oldest profession[2] is having to adapt to the technological advances brought on by horizontal drilling. From a land perspective, preparations for drilling a vertical well always focused on the all-important drillsite. The party planning a vertical well focused most of his efforts on the tract that would house the drilling rig, knowing that if he did a good job there, and at least a passing job of evaluating the surrounding tracts that might make up unit for the well, his risk was minimized. Some title examiners even go so far as rendering drillsite title opinions limited entirely to the ownership of executive rights, leaving the determination of royalty ownership to a later division order title opinion, if the well was successful[3]. Changing the well's geometric pay zone from a point to a line has added to the legalconcerns and expense as well as the physical problems.

Adapting to the way we think about where a well is located has tested a number of the well-embedded legal concepts which pertain to vertical wells. Determining where a well is actually "located," and whether drilling "under" a tract is the same as drilling "on" a tract can be critical to issues of lease perpetuation, regulatory compliance, offset obligations and others, including the proper allocation of production. Now, ownership of the entire mineral estate in all tracts proximate to the well path is exceedingly important in establishing the operator's pooling authority. The confluence of concerns about proper pooling authority, combined with the determination of the proper ownership of production from a horizontal well has been the stimulus for the developing use of so-called "Production Sharing Agreements."

A. NATURE OF THE AGREEMENT

In general terms a Production Sharing Agreement is a contract among all owners within an area to be explored for horizontal development, approving a pooled area and adopting a formula for the allocation of production among the separate ownerships involved.[4] These[2] agreements can range in scope from establishing rules allocating production from a single well, to agreements more akin to field-wide units which create a plan for development and establish rules for participation in production from wells to be drilled in a sometimes significant area. The agreements may involve the combination of all or parts of two or more existing pooled units which may have been formed for production from an entirely different formation than the one to be explored. In fact, most writers on the subject attribute the inception of the practice to East Texas where horizontal drilling in the Haynesville Shale met the difficulties of dealing with existing large units which were formed for all depths and producing in the Cotton Valley formation.[5] While similar in many respects to pooling agreements and field wide unit agreements, the Production Sharing Agreement customarily has some, but not many similarities to its namesake, the "Production Sharing Contract," which is a common element of the contractual arrangements documenting an international mineral concession.

In Texas, the legal concepts which give rise to the need for a Production Sharing Agreement primarily involve conflicts in applying several basic rules of conveyancing and oil and gas lease interpretation. Among these, the "non-apportionment rule," and the rule prohibiting the pooling of a non-executive owner's interest without his consent are particularly uncomfortable in their application to horizontal wells. Where used in areas of existing production, the agreements also are important in addressing the sometimes misstated rule[6] that the pooling authority contained in an oil and gas lease will be strictly construed.

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B. THE NON-APPORTIONMENT RULE

The non-apportionment rule dates to 1925,[7] remains a binding rule of property law in Texas, and provides that in a multi-tract situation, the owners of the tract on which a well is bottomed share the entire production, to the exclusion of differing owners of other tracts which may be covered by the same lease. Clearly, the rule can create inequities in an owner's treatment, depending upon the facts and a party's perspective. The courts, the legislature and the industry have, from time to time, each adopted measures to deal with the inequities as they arise.

The problem is illustrated in an oil and gas lease which covers multiple tracts with different mineral or royalty ownerships. As in Japhet v. McRae,[8] the owner of a single tract of land, after granting an oil and gas lease, might sell a portion of the land to a third party, including his mineral rights in the tract conveyed. Or, several tracts of land might be leased by the common owner of executive rights, although royalty ownership of the tracts varies due to the existence of non-participating royalty interests (or other non-executive interests) within some,[3] but not all of the tracts. Here, the owner of a mineral or royalty interest in a tract which did not become the wellsite might have their acreage indefinitely perpetuated by production elsewhere on the lease, yet receive no income from their mineral property.[9]

1. Pooling Within a Single Lease. Operators have sometimes addressed more egregious situations involving the non-apportionment rule by forming pooled units entirely within a single lease. This is probably the rationale behind the development of printed lease forms with pooling clauses which expressly authorize the Lessee to pool lands from the lease "… with other land from this lease or with other leases in the vicinity …".[10] In forming an interior lease unit, an operator may be tempting fate by modifying ownership of production when he does not have to. However, this practice can sometimes prevent the exclusion of a royalty owner who may have missed participating in production by a matter of feet, and who is no doubt considering how to establish a drainage claim.

2. Communitization. The courts have also addressed inequitable results from the non-apportionment rule by defining situations in which an implied pooling (communitization) of interests occurs among the owners of differing mineral or royalty interests within lands covered by the same lease. Communitization theory had a logical beginning in the concept that where the owners of two separate tracts joined together in a single lease covering their combined lands, they must have intended that the lands be consolidated for the owners' joint benefit through collective development.[11] The Texas Courts then extended the concept of communitization to a single lease encompassing tracts with different royalty ownership. Here the case authorities reasoned that the executive rights owner, by signing a lease covering multiple tracts with a pooling or entireties clause has impliedly made an offer to the royalty owners to create a common pool throughout the lease which may be accepted by the non-executive owners' ratification of the lease.[12] From this point in our jurisprudence, case authorities concerning the communitization of royalties then diverged from consistency to involve concepts of implied contracts which override express contractual provisions to the contrary,[13] potentially retroactive application of the pooling of interests,14 and the possibility of partial communitization,[15] not to mention other serious headaches for title examiners. All of these factors contribute to uncertainty in matters involving royalty allocation.[4]

3. Legislative Assistance. The Mineral Interest Pooling Act[16] offers some relief to an excluded mineral owner by providing a means to force their participation in an area being drained. The Act has also been used by an operator to deal with a recalcitrant owner's hold-out tract which was obstructing the planned path of horizontal Barnett shale well.[17] Nonetheless, the prerequisites to invoke compulsory pooling under the MIPA are numerous, the process is long and expensive, and the number of instances in which a non-voluntary unit has actually been formed in this manner is very small.18 Further, a royalty owner (as distinguished from an unleased mineral owner) is generally not afforded protection under the MIPA.[19] The Voluntary Unitization Act[20] has assisted operators in consolidating field wide areas for the common benefit, even where there are owners and tracts which are not contractually bound. However, its use is generally limited to secondary recovery projects.[21] Interestingly, the "majority rules" concept of this statute's implementation, requiring approval of at least 85% of working interest owners and 65% of royalty owners for approval of the unit plan, has, as noted below, been carried forward in recent permitting rules for horizontal wells by the Railroad Commission of Texas.

4. Industry Acceptance of the Rule. Notwithstanding the inequities it sometimes causes, industry has, for the most part, embraced the non-apportionment rule for the simplicity of lease administration that it brings. This is especially true where large oil and gas leases are involved and where conducting title examination to the entire leased area before drilling is impractical. In fact, many of the printed lease forms generally available now include a clause intended to prevent the implied communitization of royalties.[22]

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C. POOLING OF THE NON-EXECUTIVE

The rule which prohibits the executive rights owner from binding a non-participating owner to the effects of a pooling clause[23] is also troublesome in the context of horizontal wells. Where a pooled unit being planned involves ownership of non-participating royalty interests or non-executive mineral interests, the location of the unit well requires greater flexibility. The failure to obtain the appropriate authorizations to pool from the non-executive owners can have costly consequences, where the operator may have to account to the non-participating owners for their full, undiluted share of production, yet account to all other owners on a pooled basis, resulting in excess royalties.[24] In the vertical well context, this can often be managed by selection of the wellsite in the pooled unit to avoid a location which was directly on the tract affected by the non-executive interest which withheld pooling authorization. Without consent, the non-executive interest cannot be pooled. Without pooling, the non-apportionment rule prohibits the non-executive from participating in production. Accordingly, in this situation the non-executive owner would be motivated to consent to the pooling or be excluded entirely.5 Where a tract in the pooled unit containing non-executive interests cannot be avoided, obtaining ratifications of the lease from the non-executive owners continues to be a viable solution in many instances, whether for vertical or horizontal wells. This assumes, however, that the pooling clauses contained in the leases are adequate to authorize the size and shape of the unit which is to be formed. However, the permitting of horizontal wells may require a unit which exceeds the size authorized by the pooling clause in some of the leases involved, particularly where the leases are of older forms which did not contemplate horizontal wells. Further, the customary lease ratification does not help in a situation where a horizontal well has been completed across multiple tracts with differing ownerships under the same lease, such that actual pooling, by designating the unit has not been involved.[25]

D. CONFUSION OF GOODS

In horizontal drilling, the operator's greatest risk for an excess royalty obligation comes from the combined effect of the rule prohibiting the pooling of a non-executive owner's interest without his consent, and the doctrine of confusion of goods.[26]

In the vertical pooling context, the owner of a non-participating royalty in a pooled drillsite tract who was not subject to pooling could insist on receiving his full interest in production from the well, undiluted by any purported consolidation of tracts.[27] If the pooled unit had already been created, and the designation of unit filed, the operator would have to account to the unpooled royalty owner on an undiluted tract basis, yet account to all other owners on a pooled basis due to contractual obligations created by the pooling clauses contained in the leases.

Where horizontal drilling is involved, a party from whom pooling authority is absent in a tract crossed by the wellbore might assert a similar stance, that he was not bound by pooling and thus could not be diluted by the consolidation of interests. Even faced with the reality that his is not the only drillsite tract crossed by the horizontal wellbore, this owner might also assert that, in addition to lacking pooling authority, the operator cannot prove that all of the well's production is not coming from the portion of the horizontal wellbore on his tract. Here the rationale is that due to the comingling of production within the wellbore, the portion contributed from each of the affected tracts cannot be accurately determined. Applying the confusion of goods doctrine, the unpooled owner contends that since the operator has commingled the owner's share of production within a mass of fungible product before it was measured, the owner should be compensated based upon the whole since the operator cannot prove otherwise.[28]

The possible extremes to which this theory may be taken are illustrated in the claim advanced in Browning vs. Luecke.[29] Here the plaintiff was the lessor and owned a royalty interest, varying in amount, within several tracts which had been pooled for production from two horizontal wells. The two pooled units in which the plaintiff's lease had been included exceeded the size authorized by the lease and failed to include a required minimum percentage of the unit6 from the plaintiff's lease. The royalty owner asserted that his interests could not be validly pooled, and that he was entitled to an accounting for production from each of his ownerships on an undiluted basis. Asserting confusion of goods, this owner contended that, his interest in each tract should be measured by the entire well's production, and then aggregated. The Third Court of Appeals reversed the trial court's judgment in favor of the royalty owner and remanded the case for the admission of expert testimony as to the proportion of the well's production emanating from each tract.30 By making the method of allocation dependent upon a fact determination, the court passed up the opportunity to provide a predictable rule of law for the allocation of production from a horizontal well. To many operators, however, the holding is favorable in dealing with the most extreme application of the confusion of goods doctrine.[31]

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E. USE OF PRODUCTION SHARING AGREEMENTS

Presented with these and other obstacles to the administration of horizontal drilling, and with faith that virtually all legal rules and regulatory hurdles can be waived by agreement, operators have seized upon the Production Sharing Agreement as an omnibus curative document. By obtaining the advance consent of everyone involved, a well can proceed or a lease or larger area can be developed based upon optimal geologic, engineering and land use considerations without interruption from the legal details. In practice, the difficulty in obtaining 100% of the required consents creates some unusual issues where the greater good meets the limits of individual rights. Nonetheless, the use of Production Sharing Agreements is increasing in popularity and some operators maintain a policy of seeking such an agreement from all affected owners for every horizontal well they intend to drill.

1. Consent to the Pooling. Several objectives can be accomplished through a single Production Sharing Agreement. Most importantly, pooling authority or its equivalent for the planned well configuration can be obtained in a manner which will amend or supersede existing restrictions in all of the applicable leases. If the planned unit is larger than that allowed by the leases, or will need to be of a shape or configuration which is not authorized, the implementation of a comprehensive framework for pooling can be structured which supplants conflicting lease requirements, without having to be specific as to those particular clauses which are being amended. Similarly, leases which do not permit pooling at all can be so amended and those which contain minimum participation requirements (i.e., a minimum number of acres from this lease, a minimum percentage of the unit area or the like) can be reconciled. This is also an appropriate opportunity to amend typical "governmental authority" provisos in the leases which are either too restrictive, ambiguous, or at the worst, incorporate regulatory concepts which do not exist (i.e., the "unit established by the Railroad Commission of Texas," etc.[32]).

2. Allocation of Production. Equally as important, the entitlement to production royalties (and in some instances, overriding royalties and working interests) can be clarified or established, and the potential for the burden of excess royalties can be eliminated, or at least[7] lessened. In this manner, the Production Sharing Agreement serves much like a Stipulation of Interest.

While most lease forms which provide for pooling allocate production based upon acreage contributed to the unit, the parties to a Production Sharing Agreement can, if they so choose, adopt a different formula for the division of production among separate tracts or separate ownerships. While the surface acreage within the affected unit is still a common basis for allocation, new yardsticks for the sharing of production are being implemented in some instances.

(a) Relative Wellbore Length. With more frequency, parties are implementing a formula in which the ratio that the length of the wellbore across each tract bears to the total length of the wellbore will control the allocation.[33] These are often measured from the well's penetration point to its terminus or from the first take point to the last take point in the wellbore, but no doubt other variations have been adopted.

(b) Number of Take Points. In wells in which the horizontal section is cased, perforated and fracture stimulated by stages, the yardstick for allocation is sometimes based upon the ratio which the number of take points within a particular tract bears to the total number of take points in the well. Variations have no doubt evolved to account for flow back testing at each point of stimulation, and those take points which have tested minimal production or water infiltration.

(c) Hybrid Allocations. Since the allocation factors are adopted by agreement, the parties to a Production Sharing Agreement may assign relevance to any number of factors. Reports indicate instances in which the parties may have adopted formulae involving a combination of metrics, with weighting based upon the relative length of the wellbore which crosses the tract, the surface acreage in each tract and a separate component based upon the proximity of each tract to the well path.[34]

3. Other Issues. A Production Sharing Agreement can also address other less obvious issues which can be anticipated to arise during the course of drilling and production. A lessor or other affected mineral owner may extract lease modifications in exchange for consent to the proposed pooling arrangement. These modifications and additional commitments may be addressed in the production sharing arrangement, although many operators will prefer to include these concessions of a financial or performance nature in a separate unrecorded amendment to the applicable lease in order to avoid notoriety.

Where working interest owners are parties to the agreement, the Production Sharing Agreement can incorporate regulatory waivers and consents, such as those required to obtain spacing and density exceptions. The drilling participants may agree, as in a working interest owner's unit, to a sharing ratio that differs from the royalty allocation method.

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Drafters with vision may also choose to include forward looking provisions, anticipating future events such as despacing regulations, in-fill drilling, amendments, modifications, enlargements and reductions in size of the consolidated area, and the failure of one or more[8] parties to join in the execution of the agreement. The parties may also provide for adjustments to the size of temporary units (formed in advance of drilling based upon the planned and permitted horizontal length) to account for the actual length of the wellbore, as drilled, exceeding or not reaching the permitted distance.

4. The Non-Joining Owner. Dealing with the non-signing owner is largely a factor of the operator's appetite for risk. Some operators deal with non-joining parties as a percentage of the whole, while others have a more calculated approach. Within any proposed consolidation of lands to support the drilling of a well there will be parties who are, in a legal sense, adversely affected (well site owners; parties with interests in the well path; parties for whom no pooling authority exists). There will also be parties who will clearly benefit by the consolidation (owners of non-wellsite tracts) and parties for whom the positive or negative impact will be fact specific (parties holding interests in multiple tracts; those for whom adequate pooling authority already exists; those considering the potential for multiple wells). Obviously, the size of the interests held by each owner is a critical factor in risk analysis, except when a small owner's consent is necessary for certain regulatory approvals, such that the size of the non-joining owner's interest is immaterial due to his ability to block a permit.[35] Most operators employ a weighted risk analysis considering all of these factors in determining the extent to which participation by all owners is necessary in order to proceed with a project, but others deem the greater good and financial pressures to outweigh many of these considerations.

F. REGULATORY DEVELOPMENTS

Fortunately, at least in Texas, operators occupy an environment in which the regulatory authorities have historically taken a pro-industry approach to regulating most aspects of their constituents. Notably, the most recent developments in this area have been regulatory, where the governmental authority is considering issuing permits for horizontal wells in situations in which less than all owners have consented to pool and even in instances where no pooling authority exists.[36]

1. Production Sharing Agreement Wells. Beginning in about 2007, the Texas Railroad Commission began approving drilling permits for wells supported by Production Sharing Agreements which combined portions of existing pooled units, or unpooled tracts in combination with existing pooled units. By 2010, the process of permitting "PSA wells" was recognized in an informal rule promulgated by the Railroad Commission staff, which reportedly was never formally adopted by the Commissioners.[37] Under the informal rule, a permit for the well would be granted where the operator confirmed to the Commission that it held Production Sharing Agreements from at least 65% percent of the royalty owners and 65% of the working interest owners.[38] In lieu of the customary form P-12 (Certificate of Pooling Authority), the agency now accepts a new form "PSA-12" in which the operator catalogs the ownership subject to the Production Sharing Agreement and quantifies the consents that have been obtained.[39] According[9] to recent statistics, the process of permitting PSA wells has been used most extensively in the Haynesville Shale, and primarily by Devon Energy.[40]

By adopting a 65% percent approval threshold, the PSA well process bears a resemblance to the Voluntary Unitization Act, where the approval of a field wide unit and secondary recovery operations can be obtained based upon consents from 85% of the affected working interest owners and 65% of the royalty owners.[41] As in the case of the field wide unit, it is important to note that the non-joining owners presumably retain all rights and claims against the operator for any violation of express and implied covenants of the applicable lease viewed on a separate basis apart from the regulatory aspects of the unit.[42]

2. Allocation Wells. The most recent of the regulatory developments have involved the permitting of so-called "allocation wells." These are wells supported by acreage from two or more existing units or unpooled tracts with common working interest ownership, but where the operator has either not obtained production sharing agreements, or has not met the threshold requirement for participation.[43] The operator proponent's theory behind the Railroad Commission's initial issuance of these permits involved the analysis that a horizontal well drilled across two tracts without pooling created, in effect, a need for two Rule 37 exceptions, one for each part of the horizontal wellbore which encroached (at a common point) upon the adjoining tract.[44] The logic followed that so long as the working interest owners and the operator were the same on the tracts involved, they could issue waivers and obtain administratively granted Rule 37 exceptions without having to involve the lessors, who were, in the agency's view, represented by the operator. The Commission considered the unsettled issues about the allocation of royalty, even in the absence of an agreement, to be a matter of contract and real property law beyond the agency's jurisdiction.[45]

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FREEPORT-MCMORAN OIL & GAS

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The controversy regarding the propriety of allocation wells has been the subject of complaints by mineral and royalty owners which have ultimately led to a presently ongoing contested application before the Texas Railroad Commission.[46] On July 16, 2012, EOG Resources, Inc. applied for a drilling permit for its proposed Klotzman (Allocation) Well No. 1H in the Eagleville (Eagle Ford 2) field in DeWitt County. The proposed allocation well was to be drilled on two tracts from separate leases, each of which prohibited pooling. With significant notoriety and participation by industry and landowner groups, the Klotzman application has proceeded to a recently issued Proposal For Decision[47] by the hearing examiner recommending that the permit application be dismissed. The examiner's recommendations were based upon the conclusion that the two tracts could not be combined without pooling, that pooling was a consensual matter derived solely from the terms of the lease, and that by combining the tracts without such pooling authority, the operator was, in effect, force pooling the lands without[10] appropriate statutory authority to do so. The proposal for decision is currently awaiting action by the Commissioners.

G. CONCLUSION

Historically, the law has been slow and reluctant to keep up with technological advances. Judges, authoritative writers, and practitioners tend to believe that issues arising from innovation should be dealt with by applying longstanding principles and classic precedents which define our collection of oil and gas jurisprudence. The consequences of horizontal drilling, however, have challenged the guiding principles to adapt to technology. While the law will always lag behind scientific advancement, we can rest assured that the combined effects of business opportunities and financial pressures can always freshen up our deep-seated rules.

[1] Jon R. Ray is a Shareholder in the San Antonio office of Winstead PC and a member of the Firm's Energy Practice Group.
[2] Admittedly, there is considerable controversy about which profession holds this honor. But, as they say, "…who do you think created the chaos?"
[3] As if this practice really saves the client any money.
[4] A number of the definitions tend to put more emphasis on an agreement to combine two existing pooled units, probably because the practical use of Production Sharing Agreements began in areas where the lands were held by production under large units pooled as to all depths for deep gas wells. See H. Phillip Whitworth and D. Davin McGinnis, Square Pegs, Round Holes: The Application And Evolution Of Traditional Legal And Regulatory Concepts For Horizontal Wells, 7 Texas Journal of Oil, Gas and Energy Law 177 (2012) ("A Production Sharing Agreement (PSA) is an agreement between royalty, working and other mineral interest owners with interests in multiple pooled units and/or unpooled leases in which the parties agree to a method for allocating production from horizontal wells traversing these lands.") See also John McFarland, Oil and Gas Lawyer Blog: Herein of "Production Sharing Agreements" and "Allocation Wells" (Nov. 10, 2012). ("The agreements provide that the royalty owners in the two existing units agree that production from the horizontal well will be "shared" between the two units based on the percentage of lateral length on each unit, and production allocated to each unit will be treated for lease and royalty payment purposes as if produced from the unit.").
[5] See McFarland supra note 4.
[6] See e.g., Texaco Inc. v. Letterman, 343 S.W.2d 726, 732 (Tex. Civ. App. –Amarillo 1961, writ ref'd n.r.e.). ("We think these factors lead to the conclusion that in the absence of clear language to the contrary, pooling clauses should not be construed in a narrow or limited venue.", citing Oklahoma authority holding "… the power to pool leases by the lessee should be given broad powers…")
[7] Japhet v. McRae, 276 S.W. 669 (Tex. Comm'n App. 1925, judgm't adopted).
[8] Id.
[9] In this situation, however, the non-participating owner may, in certain circumstances, have a self-help remedy through ratifying the lease in order to force its participation through communitizing its interest throughout the multiple tracts. See Section D, supra.
[10] This language is included in many of the Pound Printing and Stationery Company standard printed lease forms [emphasis added].
[11] French v. George, 158 S.W.2d 566 (Tex. Civ. App- Amarillo 1942, writ ref'd).
[12] Ruiz v. Martin, 559 S.W.2d 839 (Tex. Civ. App. – San Antonio 1977, writ ref'd n.r.e.).
[13] Verble v. Coffman, 680 S.W.2d 69 (Tex. App. – Austin 1984, no writ); London v. Merriman, 756 S.W.2d. 736 (Tex. App. – Corpus Christi 1988, writ denied)..
[14] DeBenevides v. Warren, 674 S. W.2d 353 (Tex. App. – San Antonio 1984, writ ref'd n.r.e.).
[15] See Veal v. Thomason, 138 Tex. 341, 159 S.W.2d 472 (1942).
[16] Tex. Nat. Res. Code Ann. ch. 102 (Vernon 1993).
[17] Oil & Gas Docket No. 09-0252373, Application of Finley Resources (2008).
[18] Tex. Nat. Res. Code Ann. §102.011 et seq.
[19] Tex. Nat. Res. Code Ann. §102.102 (Vernon 1993).
[20] Tex. Nat. Res. Code Ann. §101.011(Vernon 1993).
[21] Tex. Nat. Res. Code Ann. §101.011(1) (Vernon 1993).
[22] This provision, called an anti-communitization clause or a negative entireties clause, has been included in various printed lease forms promulgated by Pound Printing and Stationery Company. However, see London v. Merriman and Verble v. Coffman, supra note 13.
[23] Brown v. Smith, 141 Tex. 425, 174 S.W.2d 43 (1943).

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[24] See Brown v. Getty Reserve Oil Inc., 626 S.W.2d 810 (Tex. App. – Amarillo 1981).
[25] The issue here is not whether the well can be legally drilled, but how the production should be allocated to each of the tracts crossed by the wellbore. Each point along the horizontal wellbore is considered a drillsite.
[26] Moore v. Richardson Petroleum Co., 146 Tex. 174, 204 S.W.2d 606 (1947).
[27] Brown v. Smith, supra note 22.
[28] See Humble Oil & Refining Co v. West, 508 S.W. 2d 812 (Tex. 1974).
[29] 38 S.W.3d 625 (Tex. App. [3rd] 2000).
[30] Id.
[31] The Luecke Court would not support a punitive use of the cross-conveyance by pooling rule. Id. at page 645. The court also indulges a number of public policy arguments.
[32] The operator, not the Commission, establishes the unit for a well either by the plat accompanying the application for a drilling permit, the certificate of pooling authority, or the statement of productive acreage necessary to obtain an allowable.
[33] This concept was to be codified as the definition of a production sharing unit in 16 Tex. Admin. Code § 3.79, but evidently never passed. See Whitworth and McGinnis, supra note 4 at page 212.
[34] The writer has yet to have to deal with one of these, but if a large number of unit owners were involved, this project might be a legal fee annuity case.
[35] Such as where a nominal unleased mineral interest creates a lease line for Rule 37 purposes. 16 Tex. Admin Code § 3.37.
[36] See McFarland, supra note 4.
[37] Id.
[38] A copy of the Rule is attached as Appendix A.
[39] RRC Form PSA-12: Production Sharing Agreement Code Sheet is attached as Appendix B.
[40] Robert D. Jowers & Mickey R. Olmstead, Drafting Production Sharing Agreements; Ernest E. Smith Oil, Gas & Mineral Law Institute (2013) at page 9.
[41] Tex. Nat. Res. Code Ann. § 101.013. See Smith and Weaver, Texas Law of Oil and Gas, § 11.4(B)(1) (Matthew Bender & Company 2012).
[42] See Tex. Nat. Res. Code Ann. § 101.012.
[43] See Proposal for Decision in Docket No. 02-0278952, infra, Note 46.
[44] See Whitworth & McGinnis supra note 4 at 212 et seq..
[45] See Magnolia Petroleum Co. v. Railroad Commission, 170 S.W.2d 189 (Tex. 1943).
[46] Oil & Gas Docket No. 12-0278952
[47] A copy of the Proposal for Decision is attached as Appendix C.

Legislative Update

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

THE LA CITY COUNCIL VOTES TO BAN WELL STIMULATION TECHNIQUES

On February 28, The Los Angeles City Council voted unanimously on to ban hydraulic fracturing, acidizing, gravel packing and other well stimulation techniques until the council decides that state and federal regulations adequately protect the city's residents from the alleged risks associated with these methods.

The Council's motion would affect "companies conducting hydraulic fracturing within the City or in areas providing drinking water to the City," requiring them to "mitigate the effects on climate change, protect environmental quality and natural resources, [and] promote community awareness." It would allow government access to and testing of chemicals used in well stimulation, regulate wastewater disposal, and require disclosure and testing of treated wells.

When the moratorium is enacted, Los Angeles would become the largest city in the nation to ban hydraulic fracturing, and the first oil-producing city in California to do so.

The effect of the ban on existing wells within the city limits is unclear, acknowledged proponents of the moratorium. The language of the proposed ban would cover not only acidizing used to stimulate production, but small amounts of acid used to remove mineral scale during routine maintenance of wells.

Here is the text of the motion:

1. INSTRUCT the Department of City Planning (DCP), with the assistance of the City Attorney, to further review and develop regulatory controls over fracking in the City of Los Angeles.

2. REQUEST the City Attorney, with the assistance of the DCP and other relevant departments, to prepare and present an ordinance to change the zoning code to **prohibit all activity associated with well stimulation, including, but not limited to, hydraulic fracturing, gravel packing, and acidizing, or any combination thereof, and the use of waste disposal injection wells** in the City of Los Angeles, with such a prohibition to remain effective until measures are met as detailed in Motion (Koretz – Bonin).

3. CLARIFY that regulations for Motion (Koretz - Bonin - et al) concerning fracking are not to be confused with the maintenance of general underground storage facilities and the renewable energy projects that the City is pursuing.

LOS ANGELES CHAMBER OF COMMERCE VOICES OPPOSITION ON OIL BAN

Gary Toebben, President & CEO of the Los Angeles Area Chamber wrote a powerful critique in the Chamber's blog of the Los Angeles City Council's vote to halt hydraulic fracturing. Mr. Toebben wrote that the proposed ordinance puts middle class jobs fueled by oil, manufacturing and construction are under attack by the NIMBY mentality and thus are greatly depleting the middle class jobs in these sectors.

He wrote that the ban on drilling initiated last week by the L.A. City Council "is a rush to public policy based on misinformation and fear. Of the 218 wells in L.A. County treated with well stimulation in 2013, only 17 were in the City of L.A., and none of the wells within the City were stimulated with hydraulic fracturing. There is no reason for the City of Los Angeles to unilaterally move ahead of SB 4, which will use sound science to provide comprehensive oversight and regulation".

Furthermore, he noted "that construction of the Terminal Island Water Reclamation Plant that helps prevent ocean water from contaminating our groundwater basin used the same type of horizontal directional drilling technology used in hydraulic fracturing. Geothermal projects that generate emission free renewable energy from deep underground sources also use similar drilling techniques".

He concludes, "The real risk to the public from this ban is financial. Millions of dollars in revenue to city, county and state

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government that fund critical public services are at risk. The royalties paid to families throughout the City that have mineral rights contracts will be wiped out by this action. The City will also have to foot the legal costs fighting suits brought by these many contract holders.

WHO HAS JURISDICTION, STATE OR CITY? A LOOK AT PREEMPTION AND REGULATORY TAKING

Preemption

Preemption is a legal principle that prevents local governments from adopting regulations that contradict with state law.

A local regulation would be preempted if the court were to find that any one of the following three circumstances is taking place:

- The ordinance duplicates state law (Test No. 1)
- The ordinance contradicts a state statute which expressly occupies the field (Test No. 2)
- The state occupies the legislative area by implication

Section 3106 of the California Public Resources Code gives authority to the Supervisor DOGGR to regulator drilling activity in the state. It states:

"The supervisor shall also supervise the drilling, operation, maintenance, and abandonment of wells so as to permit the owners or operators of the wells to **utilize all methods and practices known to the oil industry for the purpose of increasing the ultimate recovery of underground hydrocarbons."**

Under SB4, DOGGR is developing regulators regarding hydraulic fracturing. Thus, the City of Los Angeles ordinance duplicates SB4 (Test No. 1 for preemption)

Under the Public Resources Code, owners and operators may "utilize all methods and practices known to the oil industry." Thus, the City of Los Angeles ordinance contradicts the Public Resources Code (Test No. 2 for preemption)

These two factors above (Test No. 1 and Test No. 2) provide a basis for a court to determine that the City of Los Angeles ordinance is preempted by state law.

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Regulatory Taking

Regulatory taking is a situation in which a government regulates a property to such a degree that the regulation effectively amounts to an exercise of the government's eminent domain power without actually divesting the property's owner of title to the property.

When a regulation denies an owner economically viable use of his land, it will be judicially recognized as the equivalent of a taking which may not take place without payment of just compensation to the property's owner.

In a 10 to 0 vote, the Los Angeles City Council banned "all activity associated with well stimulation, including, but not limited to, hydraulic fracturing, gravel packing, and acidizing, or any combination thereof, and the use of waste disposal injection wells."

If water disposal cannot take place, oil operations in Los Angeles will be shutdown, and the affected oil fields will have no economic value. It is the equivalent of condemnation, and owners of mineral rights may be entitled to compensation from the City of Los Angeles.

FUTURE OF WHITTIER FIELD STILL UP IN AIR

Last year, Santa Barbara-based Matrix Oil Corp, began drilling on a 7-acre site in the Whittier hills that is part of a nature preserve the city bought with $9.3 million in Proposition A funds.

However, a Los Angles Superior Court judge halted the work in June saying Proposition A funds can't be used for any other use but open space. Proposition A is a measure that taxed county residents for open space acquisition and anti-gang programs. The injunction was continued in November, but the Judge ruled the injunction will end on June 30, 2015.

According to Mayor Bob Henderson, the city purchased the property from the county with the understanding that they also purchased the mineral rights, and that is was clearly parts of the contract the county wrote with the city.

Because of current legal challenges, the mayor has said that the City Council is united in its commitment to pursuing the city's oil drilling project after the contract with the city and the Proposition A District expires June 30, 2015.

The oil project, if it is allowed to proceed, could add $1.5 billion to city coffers over the possible 20-year to 30-year life of the oil field, according to earlier city estimates.

However, many Whittier residents oppose the oil project saying it's a misuse of Proposition A funds that are intended to preserve the undeveloped hill country. Opponents also fear other cities will try to do the same thing, threatening the intent of saving open space through taxes.

FIRST OF WHAT MAY BE SEVERAL HF MORATORIUM BILLS INTRODUCED

Senator Holly Mitchell (D - Los Angeles), who in last year's legislative session introduced a ban of hydraulic fracturing bill that failed has introduced a similar bill in this year's session. This bill would require the current mandated EIR to consider additional elements, including, among other things, evaluating various potential direct, indirect, and cumulative health and environmental effects of onshore and offshore well stimulation and well stimulation treatment-related activities, as specified. The bill would also prohibit all well stimulation treatments until the Secretary of the Natural Resources Agency convenes a committee to review the scientific study, as specified, the Governor issues findings that specific measures are in place to ensure that well stimulation treatments do not pose a risk to, or impairment of, the public health and welfare or to the environmental and economic sustainability of the state, and, if applicable, those findings are affirmed by judicial review, as specified. The bill would also require the division to adopt a formal process to resolve any claims with respect to vested rights, as specified.

9.5% OIL SEVERANCE TAX INTRODUCED

Senator Noreen Evans (D -Santa Rosa) introduced SB 1017, a 9.5% oil Severance Tax. Senator Evans introduced a similar bill last year, which went down in defeat. Proposals for higher oil taxes have been tried in each of the last 10 years both in the legislature and on local and statewide ballots. The bill contains the following provisions: 9.5% tax on oil and 3.5% on natural gas. The Santa Rosa Democrat is joining forces with California college students, including local Santa Rosa product Harrison "Jack" Tibbetts, a UC Berkeley senior, in an attempt to get a tax on oil extraction in California. The senator estimates will tax will generate about $2 billion annually at $100 price per barrel.

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California currently charges a per barrel tax on all barrels that are held in the ground as reserves called the Ad Valorem property tax. Coupled with California's high corporate, personal, and sales tax, each barrel of oil produced in California is taxed at about the same level as most oil producing states. Instead of the Ad Valorem, some states, but not all, have a severance tax that taxes each barrel of oil as it is produced rather than while it's in the ground. With a 9.5% severance tax, California would pay double what Texas charges on a per barrel basis.

SENATOR STEINBERG PROPOSES A CARBON TAX OF 15 CENTS A GALLON ON FUELS

Senator Darrell Steinberg (D - Sacramento), the president pro tem of the state Senate who will leave the position and the Legislature later this year, has proposed that gasoline taxes be increased sharply to fight global warming by introducing SB 1017. To comply with AB 32 mandates that kick in 2015, pump prices are likely to climb more than 12 cents per gallon starting Jan. 1, according to both the oil industry and environmental experts. That's when the state's complex cap-and-trade system for pollution credits expands to cover vehicle fuels and their emissions. As a result, gasoline producers would need to buy pollution credits, and they are expected to pass the cost along at the pump.

Steinberg wants to replace the buying and selling of credits for vehicle fuel emissions and replace them with a straightforward "carbon tax." His proposed carbon tax would be collected at the distribution point and probably passed along to wholesalers, retailers and ultimately consumers. Steinberg, speaking to the Sacramento Press Club, offered the gas tax – about 15 cents a gallon and $3.6 billion a year to start and then rising over time – as an alternative to bringing the fuel industry under the state's "cap-and-trade" fees aimed at lowering greenhouse gas emissions, now scheduled for 2015. His proposed carbon tax would rise to an estimated 24 cents per gallon in 2020, which would keep total gas prices lower than they would be under cap-and-trade projections. He argued that a "carbon tax" would be better because its effect on gasoline prices would be more predictable and its proceeds "will be used to alleviate the financial burden of carbon pricing among low- and middle-income families" with an earned income tax credit.

Environmentalists will see this "carbon tax" as undermining the cap-and-trade program, and it appears that it will be a huge uphill battle to get the two-thirds votes in both legislative houses needed for the bill to pass.

Infrastructure Financing Districts Approved for Redevelopment Project Areas

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

Despite being destroyed and dismantled, redevelopment in California has been born once again, this time reincarnated under the name of "Infrastructure Financing Districts." Last week, Governor Brown signed into law AB 471, which amends section 53395.4 of the California Government Code to allow infrastructure financing districts to finance a project or portion of a project located within a redevelopment project area or former redevelopment project area.

Infrastructure financing district law now provides a mechanism to finance projects that would have otherwise been financed by redevelopment agencies but for their elimination. Local agencies can now form an infrastructure financing district over a redevelopment project area to finance redevelopment projects that were not yet completed prior to the dissolution of redevelopment agencies. The newly formed infrastructure financing district can issue bonds to pay for real or other intangible property and certain public capital facilities of communitywide significance, and such bonds will be secured by any increase in property tax revenue over the assessed value of the property within the infrastructure financing district.

The new law also encourages local agencies to wrap up their redevelopment affairs, as a redevelopment project cannot be financed until the successor agency to the former redevelopment agency receives a finding of completion. Similarly, the law makes clear that any new debt or obligation created under infrastructure financing district mechanism will be subordinate to enforceable obligations of the former redevelopment agency. In other words, the new law may accelerate the redevelopment wind-down process.

The question now is whether or not infrastructure financing districts will be successful to re-invent redevelopment projects. The infrastructure financing district idea passed the Legislature in the early 1990s as an alternative to redevelopment, permitting the use of tax-increment financing for infrastructure without requiring a finding of blight. But the idea has rarely been used, primarily because they require two-thirds voter approval to be created or issue bonds. While there was discussion about reducing this requirement, as part of the new law the the two-thirds vote requirement was not changed.

Mr. Kuhn can be reached at bkuhn@nossaman.com.

Lorman Educational Services Offer in May

Lorman Educational Services presents another fine course in Pasadena, California, on May 1, 2014. The course offered is, "Oil and Gas Rights in California." All four distinguished speakers hail from the California Oil Patch - Jack Quirk, Esq. and Kristin G. Taylor, Esq, both of Bright and Brown; Edward S. Renwick, Esq., of Hanna & Morton LLP and Michael L. McQueen, Esq., of the Law Office of Michael L. McQueen.

Although the attached brochure does not mention AAPL CE credits, it does offer 6.0 MCLE hours. For those professional landmen looking for CE credits it is suggested an Affidavit of Attendance be submitted to AAPL Education for those credits.

The brochure offers a 20% discount for using the Discount Code. See brochure for details on topics being presented and discounts.

2014 West Coast Landmen's Institute – Las Vegas Style

WE ARE GOING TO VEGAS THIS YEAR – where you can get lost in educational matters or lose your money in the slots machines. As the advertisement states, "What happens in Vegas, stays in Vegas."

This year's WCLI is set for October 22nd, 23rd and 24th at the Flamingo in Las Vegas. The tentative topics will be presented in two parts. Part I – Land and Legal. Part II – Industry/Political Updates. Of course, our annual Dave Kilpatrick updates.

EDUCATIONAL CORNER

Education Chair - Vacant

Need continuing education credit? The American Association of Professional Landmen (AAPL) is committed to providing education seminars and events that support our membership base. Listed below are continuous courses available for the upcoming months. You can also earn credits by attending our luncheons based upon speaker and subject matter. Please visit www.landman.org to browse all of the upcoming nationwide events.

March 2014

Oil and Gas Land Review, RPL/CPL Exam
When: March 19-22, 2014
Where: San Antonio, TX
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

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
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

APPL Home Study Program

AAPL's Home Study program allows members to earn continuing education credits at their own convenience and schedule. The courses cover the issues most relevant to today's Landman and cost between $30 and $75 to complete. To receive continuing education credits via a home study course:

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

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

General Credit Courses

#101 Due Diligence for Oil and Gas Properties
Credits approved: 10 CPL/RPL
$75.00

Ethics Credit Courses

#102 The Outer Continental Shelf
Credits approved: 5 CPL/RPL
$37.50

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General Credit Courses

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

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

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

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Oil and Gas Rights in California

Pasadena, CA • May 1, 2014

Faculty

Moderator:
Edward S. Renwick, *Hanna & Morton LLP*

John Quirk, *Bright and Brown*
Kristin G. Taylor, *Bright and Brown*
Michael L. McQueen, *Law Offices of Michael L. McQueen*

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Seminar Agenda

8:30 AM - 9:00 AM Registration

9:00 AM - 10:00 AM Understanding Ownership of Oil and Gas Rights
— *John Quirk*
- Relevant Fundamental Principles of Oil and Gas Law
- Mineral-Related Entry, Use and Improvement
- Separation or Severance of Oil and Gas Rights
- Issues of Mineral Co-Tenancy
- Collateral Regulations of Oil and Gas Operations

10:00 AM - 10:45 AM Analyzing Rule of Construction That Oil and Gas Leases Are to Be Interpreted Liberally in Favor of Lessor and Strictly Against Lessee
— *Kristin G. Taylor*
- Discussion of California Court of Appeal Decisions Finding the Rule
- Lack of California Legal Precedent Supporting the Rule
- Lack of Support in Cited Secondary Source
- Cases Correctly Decided Without Resort to Rules of Construction

10:45 AM - 11:00 AM Break

11:00 AM - 12:15 PM A Study in Cooperative Subsurface Oil and Gas Development Rights
— *John Quirk*
- Specific Entry, Use and Improvement
- The Overflight Trespass Cases
- Appalachian Coal Mining and Coal Mining Rights
- Cooperative Subsurface Oil and Gas Development in North Dakota
- Geothermal Rights Included in a General Grant of Minerals

12:15 PM - 1:15 PM Lunch (On Your Own)

1:15 PM - 2:45 PM Surface Use Disputes – in the Trenches
— *Michael L. McQueen*
- Mineral and Surface Estate Conflicts
- Nature of the Mineral Estate, Dominate Surface Use Right Conflicts
- Necessary and Convenient Standard – Surface Owner Concerns
- Split Estate Issues
- Litigation Strategies, TRO, Restraining Orders, Self-Help
- Easement, License, Lease – Who Cares?

2:45 PM - 3:00 PM Break

3:00 PM - 4:30 PM From Peak Oil to Abundant Oil
— *Edward S. Renwick*
- Where We Were, Where We Are, How We Got Here and Where Are We Going?
- The Role of Hydraulic Fracturing in the Transition From Peak Oil to Abundant Oil
- The Potential for Hydraulic Fracturing in California
- How California Regulates Hydraulic Fracturing

Presented By:

Michael L. McQueen
- Natural resource attorney for 35 years
- 10 years as division counsel for Unocal Geothermal Division and alternative energy projects
- Qualified expert in flooding litigation, experienced with alternative energy, mining and related complex litigation
- Court appointed mediator for oil and gas production disputes
- Can be contacted at 805-445-9751 or Mmcqueen@mcqlaw.com

John Quirk
- Partner, Bright and Brown, Glendale, California
- Practice area includes oil and gas exploration and development, emphasis on real property oil and gas title
- Received a "Special Award—Education" at the American Association of Professional Landman's 2006 Convention, San Diego, California, "In recognition for his work in California in education for the land profession"
- Frequent speaker for MCLE and at oil and gas industry meetings and events including annual West Coast Landmen's Institute, California Independent Petroleum Assn., and National Association of Lease and Title Analysts
- Can be contacted at 818-243-2121 or jquirk@brightandbrown.com

Edward S. Renwick - Moderator
- Partner of Hanna & Morton LLP, Los Angeles California
- Practice area includes trials, appeals, transactions and counseling primarily in the oil and gas industry
- Fellow of the American College of Trial Lawyers
- Writes Annual Survey of Oil and Gas Law (California portion) Texas A&M Law Review (formerly Texas Wesleyan Law Review)
- May be contacted at 213-430-2516 or erenwick@hanmor.com

Kristin G. Taylor
- Partner, Bright and Brown, Glendale, California
- Practice area includes complex commercial litigation, with an emphasis on oil and gas contract and agreement disputes
- Past speaker for MCLE oil and gas topic seminars
- Can be contacted at 818-243-2121 or ktaylor@brightandbrown.com

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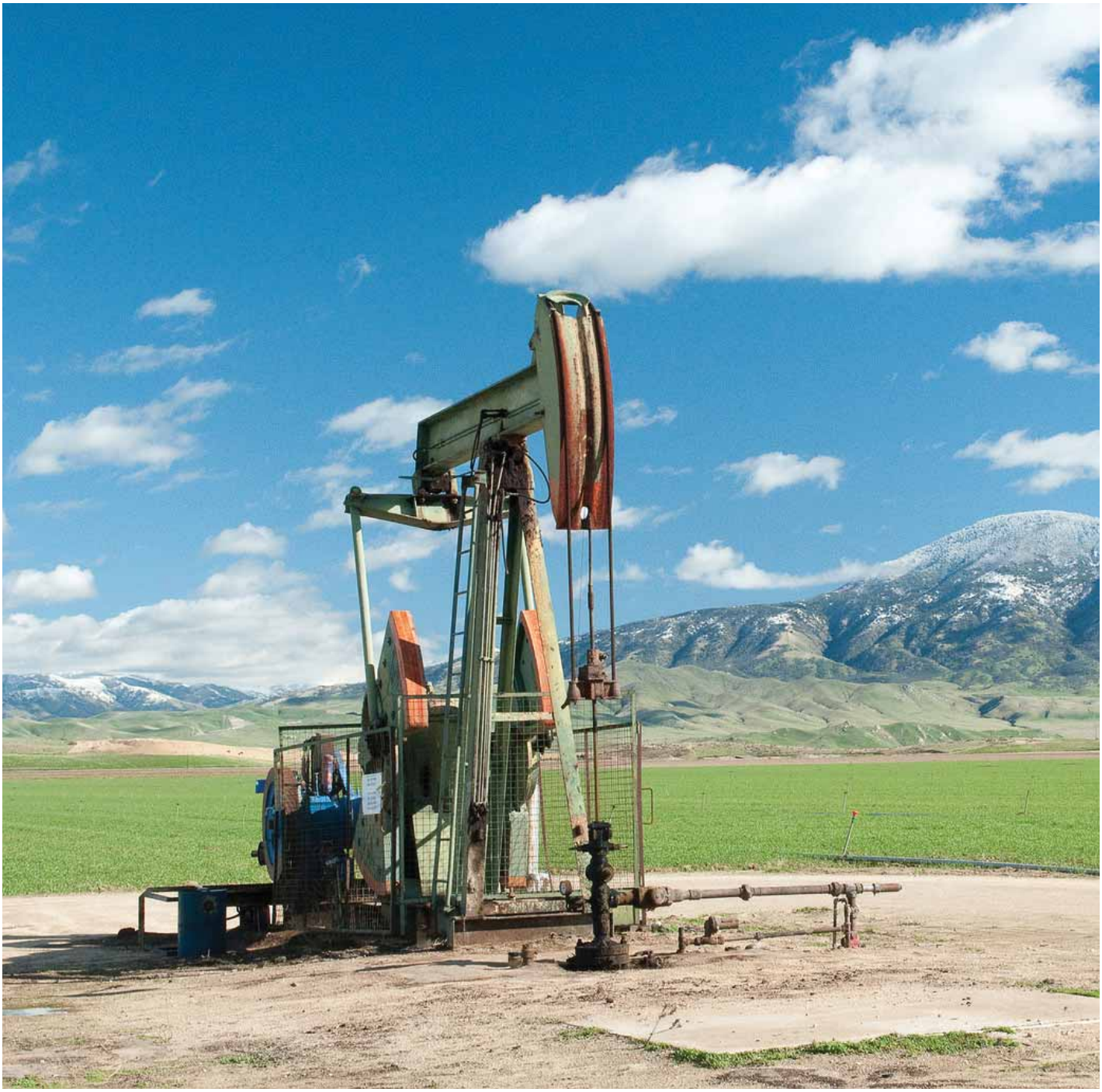

THE MORAL CASE FOR FOSSIL FUELS

The Key to Winning Hearts and Minds

by Alex Epstein
Founder, Center for Industrial Progress Author,
Fossil Fuels Improve the Planet

Originally Published in Landman, Winter Issue 2014

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THE PROBLEM

Imagine you are talking to the VP of Communications for a tobacco company, who claims that he has a new strategy for winning the hearts and minds of the public:

- "We will explain to the public that we contribute to economic growth."
- "We will explain to the public that we create a lot of jobs."
- "We will link our industry to our national identity."
- "We will stress to the public that we are addressing our attackers' concerns—by lowering the emissions of our product."
- "We will spend millions on a state-of-the-art media campaign."

Would you be convinced? I doubt it, because none of these strategies does anything to address the industry's fundamental problem—that the industry's core product, tobacco, is viewed as a *self-destructive addiction*. So long as that is true, the industry will be viewed as an inherently immoral industry. And so long as that is true, no matter what the industry does, its critics will always have the moral high ground.

Sound familiar? Substitute "fossil fuels" for "tobacco" and you have the fundamental communications problem the fossil fuel industry faces.

THE MORAL CASE AGAINST FOSSIL FUELS

You might say that it's offensive to compare the fossil fuel industry to the tobacco industry—and you'd be right. But in the battle for hearts and minds, you are widely viewed as worse than the tobacco industry.

Your attackers have successfully portrayed your core product, fossil fuel energy, as a self-destructive addiction that is destroying our planet, and your industry as a fundamentally immoral industry. In a better world, the kind of world we should aspire to, they argue, the fossil fuel industry would not exist.

US President Barack Obama has described the oil industry as a "tyranny." Allegedly "pro-oil" former president Bush coined the expression "America's *addiction* to oil." There is far more public hostility to the fossil fuel industry than to the tobacco industry. And it is accused of being far more damaging. As Keystone pipeline opposition leader Bill McKibben put it to widespread acclaim, the fossil fuel industry is "Public Enemy Number One to the survival of our planetary civilization."

Your attackers have successfully portrayed your core product, fossil fuel energy, as a self-destructive addiction that is destroying our planet.

Why is the industry viewed as immoral? Because for decades, environmentalist leaders have made a *false but unanswered moral case against the fossil fuel industry*—by arguing successfully that it inherently destroys our planet and should be replaced with environmentally beneficial solar, wind, and biofuels.

According to this argument, it destroys our planet in two basic ways: by *increasing environmental dangers* (most notably through catastrophic global warming) and *depleting environmental resources* (through using fossil fuels and other resources at a rapid, "unsustainable" pace).

Like any immorality or addiction, the argument goes, we may not pay for it at the beginning but we will pay for it in the end. Thus, the only moral option is to use "clean, renewable energy" like solar, wind, and biofuels to live in harmony with the planet instead of exploiting and destroying it. And we need to do it as soon as is humanly possible.

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THE FOSSIL FUEL INDUSTRY'S MORAL SURRENDER

There is only one way to defeat the environmentalists' moral case against fossil fuels—refute its central idea that fossil fuels destroy the planet. Because if we don't refute that idea, we accept it, and if we accept that fossil fuels are destroying the planet, the only logical conclusion is to cease new development and slow down existing development as much as possible.

Unfortunately, the fossil fuel industry has not refuted the moral case against fossil fuels. In fact, the vast majority of its communications *reinforce the moral case against fossil fuels.*

For example, take the common practice of publicly endorsing "renewables" as the ideal. Fossil fuel companies, particularly oil and gas companies, proudly feature windmills on webpages and annual reports, even though these are trivial to their bottom line and wildly uneconomic. This obviously implies that "renewables" are the goal—with oil and gas as just a temporarily necessary evil.

There is only one way to defeat the environmentalists' moral case against fossil fuels—refute its central idea that fossil fuels destroy the planet.

Don't think it's just the BPs, Shells, and Chevrons of the world who do this. Here's a concession of "renewables'" moral superiority by the most overtly pro-fossil-fuel trade organization I know of, the Western Energy Alliance (WEA):

> Natural gas doesn't compete with renewable energy; in fact, it helps make the vision a reality. Greater electricity production from intermittent sources of power such as wind and solar is possible because natural gas electric generation is available to fill in during the large gaps of time when the wind isn't blowing and the sun isn't shining.

Translation: solar and wind are superior, "sustainable," "renewable" forms of energy—a "vision" we should make "a reality." And natural gas is justified, not as a great source of power that deserves to exist because it is great, but as a *necessary* means to a "renewable" future. It's clear that ideally we wouldn't want natural gas, but unfortunately we need it now.

Another way in which the fossil fuel industry reinforces the moral case against itself is by bragging that it is less destructive of the planet than it used to be.

For example, this last September, practically every oil and gas association enthusiastically printed news that the oil and gas industry "invested" between $80 billion and $160 billion in "GHG mitigation technologies" from 2000 to 2012, which contributed to a minor decline in US CO2 emissions during that period.

By endorsing greenhouse gas emissions as a fundamental benchmark of environmental health, the industry is conceding that it is causing catastrophic global warming—and that reducing greenhouse gas emissions is a moral imperative. But if you support that goal, you have to know that the "official" targets for emissions reductions are over 85% worldwide—which would mean the demolition of your industry. If greenhouse gas reductions are obligatory, then it is obligatory to get away from fossil fuels as soon as possible.

Still another way in which the fossil fuel industry reinforces the moral case against itself is by trying to sidestep the issue with talks of jobs or economics or patriotism. While these are important issues, it makes no sense to pursue them via fossil fuels if they are destroying our planet. Which is why environmentalists compellingly respond with arguments such as: Do we want economic growth tied to poison? Do we want more jobs where the workers are causing harm? Do we want our national

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Unfortunately, the fossil fuel industry has not refuted the moral case against fossil fuels. In fact, the vast majority of its communications reinforce the moral case against fossil fuels.

identity to continue to be associated with something we now know is destructive?

There are many, many more forms of conceding the environmentalists' moral case and giving them the high ground. Here are half a dozen more just to give you a sense of the scope of the problem. (When I work with companies, one of the first objectives is to ferret out and eliminate all forms of conceding the moral case against fossil fuels.)

- Not mentioning the word "oil" on homepages (this has at times been true of ExxonMobil, Shell, and Chevron). This implies that you're ashamed of what you do, and that your critics are right that oil is a self-destructive addiction.

- Focusing attention on everything but your core product—community service initiatives, charitable contributions, etc. This implies that you're ashamed of your core product.

- Praising your attackers as "idealistic." This implies that those who want your destruction are pursuing a legitimate ideal.

- Apologizing for your "environmental footprint." This implies that there's something wrong with the industrial development that is inherent in energy production.

- Spending most of your time on the defensive. This implies that you don't have something positive to champion.

- Criticizing your opponents primarily for getting their facts wrong without refuting their basic moral argument. This implies that the argument is right, your opponents just need to identify your evils more precisely.

The industry's position amounts to: "our product isn't moral, but it's something that we will need for some time as we transition to the ideal fossil-free future." What you're telling the world is that you are a *necessary evil*. And since the environmentalists also agree that it will take some time to transition to a fossil-free future, *the argument amounts to a debate over an expiration date.*

Environmentalists will argue that fossil fuels are necessary for a shorter time and you'll argue that they're necessary for a longer time, and they'll always sound optimistic and idealistic and you'll always sound cynical and pessimistic and self-serving.

So long as you concede that your product is a self-destructive addiction, you will not win hearts and minds—and you will not deserve to.

But your industry is not a necessary evil. It is a superior *good*. In the following sections I will explain the moral case for fossil fuels and the principles of communicating it to win hearts and minds.

THE MORAL CASE FOR THE FOSSIL FUEL INDUSTRY

What does it mean to be moral?

This is an involved philosophical question, but for our purposes I will say: an activity is moral if it is fundamentally beneficial to human life.

By that standard, is the fossil fuel industry moral? The answer to that question is a resounding yes. By producing the most abundant, affordable, reliable energy in the world, the fossil fuel industry makes every other industry more productive—and it makes every individual more productive and thus more prosperous, giving him a level of opportunity to pursue happiness that previous

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generations couldn't even dream of. Energy, the fuel of technology, is *opportunity*—the opportunity to use technology to improve every aspect of life. *Including our environment.*

Any animal's environment can be broken down into two categories: threats and resources. (For human beings, "resources" includes a broad spectrum of things, including natural beauty.)

To assess the fossil fuel industry's impact on our environment, we simply need to ask: What is its impact on threats? What is its impact on resources?

The moral case against fossil fuels argues that the industry makes our environment more threatening and our resources more scarce.

The energy we get from fossil fuels is particularly valuable for protecting ourselves from the climate.

But if we look at the big-picture facts, the exact opposite is true. The fossil fuel industry makes our environment far safer and creates new resources out of once-useless raw materials.

Let's start with threats. Schoolchildren for the last several generations have been taught to think of our natural environment as a friendly, stable place—and our main environmental contribution is to mess it up and endanger ourselves in the process. Not so. Nature does not give us a healthy environment to live in—it gives us an environment full of organisms eager to kill us and natural forces that can easily overwhelm us.

It is only thanks to cheap, plentiful, reliable energy that we live in an environment where the air we breathe and the water we drink and the food we eat will not make us sick, and where we can cope with the often hostile climate of Mother Nature. Energy is what we need to build sturdy homes, to purify water, to produce huge amounts of fresh food, to generate heat and air-conditioning, to irrigate deserts, to dry malaria-infested swamps, to build hospitals, and to manufacture pharmaceuticals, among many other things. And those of us who enjoy exploring the rest of nature should never forget that oil is what enables us to explore to our heart's content, which pre-industrial people didn't have the time, wealth, energy, or technology to do.

The energy we get from fossil fuels is particularly valuable for protecting ourselves from the climate. The climate is inherently dangerous (and it is always changing, whether we influence the change or not). Energy and technology have made us far safer from it.

The data here are unambiguous. In the last 80 years, as CO2 emissions have risen from an atmospheric concentration of .03% to .04%, climate-related deaths have declined 98%. Take drought-related deaths, which have declined by 99.98%. This has nothing to do with a friendly or unfriendly climate, it has to do with the oil and gas industry, which fuels high-energy agriculture as well as natural gas-produced fertilizer, and which fuels drought relief convoys.

Fossil fuels make the planet dramatically safer. And dramatically richer in resources.

Environmentalists treat "natural resources" as a fixed pile that nature gives us and which we dare not consume too quickly. In fact, nature gives us very little in the way of useful resources. From clean water to plentiful food to useful medicines, we need to *create them* using ingenuity.

This is certainly true of energy. Until the Industrial Revolution, there were almost no "energy resources" to speak of. Coal, oil, and natural gas aren't naturally resources—

Fossil fuels make the planet dramatically safer. And dramatically richer in resources.

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they are naturally useless. (Or even nuisances.) Those who first discovered how to convert them into energy weren't depleting a resource, they were creating a resource. The world was a better place for it.

"Renewables" are no more the ideal form of energy than wood is the ideal material for skyscrapers.

It is obscene to call today's new resource creators in the shale energy industry and the oil sands energy industry "exploiters" when they have turned stone and sludge into life-giving energy—a feat that may ultimately extend to trillions of barrels of once inaccessible oil (in all of human history we've used just over a trillion barrels). The fact that oil is a "finite" material is not a problem, any more than the "finite" supply of rare-earth metals is a black mark against windmills. Every material is finite. Life is all about taking the theoretically finite but practically limitless materials in nature and creatively turning them into useful resources. The fossil fuel industry does it, the "renewable"—actually, the "unreliable"—energy industry doesn't. End of story. "Renewables" are no more the ideal form of energy than wood is the ideal material for skyscrapers.

And by creating the best form of energy resource, the fossil fuel industry helps every other industry more efficiently create every other type of resource, from food to steel.

Your industry is fundamentally good. It minimizes environmental threats and maximizes environmental resources. Understanding that—really understanding that, root and branch—is the key to winning hearts and minds.

REFRAMING THE DEBATE

Let's see how the moral case for fossil fuels applies to a real-life communications challenge. We'll take a tough one: Imagine a group of oil sands companies, blasted for their use of "dirty" oil, their "environmental disturbance," their "carbon footprint," their "dangerous" pipelines, and their "toxic tailings ponds," wants to win over the general public. The typical posture these companies take is "We're not quite as bad as you think" or "We believe in renewables, too"—confirming to everyone that they are fundamentally immoral.

But using the moral case for fossil fuels, all of these issues can be reframed. Here's what such a statement might look like:

Oil Sands Energy Technology: A Canadian Revolution

For almost two centuries, Canadians have known that there were incomprehensible amounts of energy stored underground in a material called bitumen—more energy than all the oil consumed in all of human history.

But that bitumen was useless because it was locked underground in an extremely inconvenient form—mixed together with sand, clay, and water to make "oil sands" that are as hard as a hockey puck. And there was no technology good enough to get that copious but elusive energy.

Now there is—it is the technology that we, the members of Canada's oil sands industry, are proud to have spent decades developing—and proud to spend every day taking to new heights.

Using a mixture of advanced mining, drilling, heating, and refining technologies, we can turn those oil sands into bitumen and that bitumen into oil, and that oil into trillions of gallons of the world's most important transportation fuels: gasoline for personal transportation, diesel for industrial machinery, and jet fuel for air travel. That oil is also the basis for thousands of miraculous synthetic products, from plastics to artificial hearts to pharmaceuticals to bulletproof vests.

To say we are excited about this technology revolution is an understatement. Energy is the industry that

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powers every other industry: when there is more energy available in the world, it means everyone can be more productive and prosperous. And when there is more energy in the world, it means everyone can do more. The gallons of energy we produce go toward feeding a combine harvester that reaps the wheat for 500,000 loaves of bread a day; toward bringing plentiful food from areas with good harvests to areas with droughts; toward construction of a new hospital; toward bringing families together for the over two million North American weddings a year.

And while this energy revolution will be good for everyone, it is especially good for Canadians. It gives millions of us, whether we are in the oil industry or its hundreds of partner industries, the opportunities to do new, rewarding jobs—and to take on the many exciting challenges that any fast-growing industry faces.

For example, we need help overcoming shipping challenges. Every new product needs to be shipped, and ours is no different. We need help transporting our overflowing Canadian energy to other countries. We need help building new pipelines—the fastest, safest, and most cost-effective way of transporting liquids—to move our oil to the US and to our Western ports. We need help building new railways to take our oil to key cities that pipelines don't reach. And we need help driving new trucks to deliver our oil to exactly where consumers need it.

Transportation alone involves hundreds of integrated industries—and that's just one challenge we need to rise to.

Another important challenge is safety. Any time an industry produces a valuable new product, the materials in that product have to be mined and transported—and this involves safety challenges.

For example, the rare-earth metals that go into iPhones, electric cars, and wind turbines, are extremely high-toxicity on their own, and must be separated from far larger amounts of other high-toxicity materials to isolate them for industrial use.

Fortunately, the basic materials in oil sands—such as bitumen, which is made of ancient dead plants—are much less hazardous than those in most industrial processes. Still, there are real hazards, and we take them very seriously.

For example, when we mine for oil sands and separate out the different components, residue called "tailings" remain—a phenomenon that is part of virtually every mining process. Since tailings can be harmful, we use state-of-the-art technology to make sure that human beings and even animals aren't exposed to them.

We face all of our industry's challenges, from the basic challenge of providing cheap, plentiful, reliable energy, to the challenge of protecting workers from hazardous materials, with the same core values: we are committed to advancing human life and human progress by producing affordable, reliable, versatile energy—with an inviolable respect for the rights of our neighbors, our employees, and all our fellow citizens.

And in that spirit, we feel it is important to address a major concern of many Canadians: our industry's contributions to carbon dioxide emissions.

While the claims of oil sands opponents that our oil emits significantly more CO2 than other forms of oil have been proven empirically false, make no mistake: using oil fuels, and other fossil fuels (coal and natural gas) emits CO2. And while fossil fuel opponents tend to exaggerate the scale of CO2 emissions—in the last 150 years, CO2 has gone from .03% of the atmosphere to .04%—when consumers use our products it does have some impact on the atmosphere and thus the climate system. Although the average temperature around the world has only increased by a historically unremarkable 1 degree Celsius over the past 150 years, CO2 emissions likely contributed some of that (mild) warming.

Is this a significant problem—let alone the epic scale problem that would justify restricting peoples' ability to use cheap, plentiful, reliable energy?

We believe that while doomsday speculation says yes, the evidence says: no.

It is an empirical fact that the climate has becoming safer—in large part thanks to increased energy production. According to the EM-DAT (the authoritative International Disaster Database), overall climate-related deaths

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are down 98% in the last 80 years. This is due to the proliferation of climate-protection technology (climate control, sturdy homes, weather satellites, drought relief convoys, modern agriculture), which are made possible by fossil fuels, especially oil.

We cannot have a meaningful discussion about climate if we ignore the importance of portable energy in building sturdy, heated-and-air-conditioned homes or in powering an agricultural system that has reduced drought-related deaths by 99.98% in the last 80 years.

More broadly, high-energy, highly-developed countries have the most livable environments, because they have the means to protect themselves from the many dangers of nature. Low-energy, undeveloped countries have the worst environments and are the most vulnerable to disasters, whether natural or manmade.

Anyone who cares about our environment and our climate must recognize that cheap, plentiful, reliable energy is a nonnegotiable essential.

Unfortunately, environmental groups who oppose oil sands have not demonstrated a concern for the availability of cheap, plentiful, reliable energy. We live in a world that desperately needs energy growth. Over a billion people lack any electricity—not coincidentally, they live in the most dangerous environments. For everyone in the world to have the same amount of energy as the average German we would need a doubling of energy production.

Over 80% of the energy that the citizens of the world use to survive and flourish comes from fossil fuels—because that is the cheapest, most plentiful, most reliable source ever developed. Many environmental groups say at least 80% of it should be illegal. Most of the rest of our energy comes from non-carbon nuclear and hydroelectric—which most of these same environmental groups fight to outlaw. They claim to support solar and wind technology, which, after 50 years of subsidies, produce less than 1% of the world's energy—and, because the sun and wind provide only intermittent energy, require fossil fuel backups.

Anyone who cares about our environment and our climate must recognize that cheap, plentiful, reliable energy is a nonnegotiable essential.

We will not regard such groups as legitimate participants in a constructive discussion about energy—until they acknowledge the irreplaceable value of cheap, plentiful, reliable energy for our economy and our environment.

Fortunately, most Canadians, including many who consider themselves environmentalists, are interested—not in blind, anti-development hostility and hysteria—but in learning about the technologies that will move our nation and our world forward. We believe that oil sands technology is the technology of the future—our future. We believe that this is Canada's Decade of Opportunity. Let's seize it.

VALUES-BASED COMMUNICATION

Do you agree that the above statement is more likely to win hearts and minds than what you would typically see from oil companies? If so, note that in this statement I was able to reframe every issue to take the moral high ground. And I'm only able to do this because I know the moral case thoroughly.

When CIP teaches communications to companies, we teach first and foremost that effective communication begins with a deep understanding of your own case.

After understanding, the second most important aspect to communicating the moral case for fossil

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fuels is values-based communication. Values-based communication is communication that vividly connects your audience's values to the conclusion you want them to reach and the action you want them to take.

Here are six of the principles of values-based communication that we apply—and teach.

1. Challenge/triumph storytelling: What kind of activities and industries do we value? Ones that pursue a noble, difficult goal and overcome challenges to achieve it. To the extent that we regard an industry's activity (such as producing electricity cheaply) as easy or immoral, we will not value it. Thus, CIP continuously frames issues in terms of challenges and triumphs—economic, technological, environmental. Life gives us a challenge—such as the need for high-caliber energy—and industrialists use ingenuity and effort to triumph over that challenge and improve human life and the human environment.

2. Emphasize their need and your achievement: Always explain the fundamental human need that your industry/product meets. For example, the coal industry globally is the best in the world at meeting our need for the electricity that purifies our water, manufactures our appliances, cools our homes, and keeps the Internet on.

3. Technologize your industry: Always stress that you are a technology industry—you use human ingenuity to solve problems and meet fundamental human needs. The word "technology" rightly has many positive moral associations in the minds of the public and you have every right to capitalize on this. For example, natural gas and coal technologies are the leading electricity technologies in the world, they are ever-evolving, and the industry should make that very clear.

4. Personalize the value you create: Always make clear how your product impacts the lives of specific individuals. Only then do big-picture numbers resonate; otherwise they are empty. Here's an example I've used for the oil industry: "This past year, the oil industry helped take 4 million newlyweds to their dream destinations for their honeymoons. It helped bring 300 million Americans to their favorite places: yoga studios, soccer games, friends' houses. It made possible the bulletproof vests that protect 500,000 policemen a year and the fire-resistant jackets that protect 1,000,000 firefighters a year."

5. Humanize your people: Always make clear that your industry is made up of admirable individuals who are proud of their jobs because those jobs are doing something morally good—using technology to produce the fuel of civilization. Do not try to humanize your producers by giving non-fossil fuel justifications for their jobs—such as their charitable work, planting trees, etc. That concedes that their real job is immoral and needs an outside justification. You don't hear solar employees trying to justify themselves by the trees they plant (even though they cut down a heck of a lot of trees!).

6. Normalize your hazards: Always acknowledge that every human activity has hazards, and do not shy away from yours. Instead, stress that though every technology faces safety/health challenges, your industry is one of the best at overcoming them. It's important to stress that no industry is exempt from such challenges. For example, point out the immense mining hazards involved in aggregating the materials for manufacturing solar panels and the significant waste disposal hazards involved. Hazards are normal. The question is, who can minimize them while maximizing benefits? Remind people that the biggest hazard of all is a lack of affordable, reliable energy—because that means a lack of all the benefits it provides.

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WHAT IS POSSIBLE

In my experience, whatever the audience and whatever the medium, to base communications on the moral case for the fossil fuel industry is a game-changer.

I divide winning hearts and minds into three categories: neutralizing attackers, turning non-supporters into supporters, and turning supporters into champions. Here are some examples of how this works in practice.

An example of neutralizing attackers is a presentation I gave at Vassar College on "Fossil Fuels Improve the Planet" (my book). Here's a description of the event from the host:

> Before Alex Epstein's lecture, no other students on my campus could imagine an environmental or moral defense of the fossil fuel industry. Now, weeks later, I am amazed at how they now defend the industry. The moderates tell me that the decision to invite Epstein was the best thing we could have done. The Greens affiliated with 350.org who walked out on Epstein's lecture faced an immediate campus backlash bigger than I had ever seen. We thought these environmentalists were undefeatable for the past three years, but now, two weeks later, I can say that they are no longer a powerful force on campus.
>
> —Julian Hassan, student, Vassar College

An example of turning a non-supporter into a supporter is this "left-leaning attorney" who was (mis)educated to be anti-oil but learned the other side of the story from CIP:

> Last week I attended an informational meeting about my office's 401(k) investment options for employees' portfolios. There was a "Socially Responsible" option for those who do not want their funds invested in, among other things, oil. Knowing Alex's arguments on the life-giving properties of oil, imagine how my blood started boiling at the insinuation that it is somehow irresponsible to invest in oil. As a left-leaning attorney in Washington, D.C., I hear people demonize fossil fuels all the time, but CIP has shown me that investing in oil is one of the more socially responsible things I could do.
>
> —Attorney, Washington, DC

An example of turning a supporter into a champion, which CIP has become well-known for through our "I Love Fossil Fuels Campaign," is this member:

> I have been involved in the general debate of the benefits of the oil/gas industry for several years now. I have also been asked to serve on televised debates, give Op-Ed statements, and have written extensively on the subject of oil/gas and it's benefits to mankind. I have always found that during these engagements, that I have always been put on the defensive, and let the opposition set the tone of the discussion. While I feel that up until now, I have held my own, I have also felt that I wasn't communicating my point as effectively as I would have liked to, always being put in a defensive position. You have, by example, shown me a way to make my points in a manner that not only lets me express fully my position, but to show the industry in a truly positive light. . . . I want to thank you, and your staff for the hard work and dedication to this cause, and to tell you that you have all made a big difference in the way people discuss and look at our industry.
>
> —Terry Cunningham, EPI Associates

In my experience, whatever the audience and whatever the medium, to base communications on the moral case for the fossil fuel industry is a game-changer.

There is no reason why the fossil fuel industry can't be ten times more effective at neutralizing attackers, turning non-supporters into supporters, and turning

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supporters into champions. These ideas are not only logical in theory; they also work in practice.

Based on my experience, I believe that if enough of us work together applying these ideas, the unimaginable is possible. In the future, I see:

- Pro-fossil fuel politicians winning spectacular victories over anti-fossil fuel politicians in debates.
- Energy companies having inspiring, iconic campaigns that make them as cool as iPhones.
- Workforces full of incredibly educated, motivated, articulate ambassadors.
- Associations training members in values-based communication.
- News stories with quotes by morally confident, persuasive CEOs.
- Websites having more emotional resonance than the Greenpeace or Sierra Club websites.
- Anyone who delays a pipeline for five years is widely criticized, not as pro-environment, but as anti-progress.
- A new generation of intellectuals who are passionate advocates of fossil fuels.
- College campuses where students are not afraid to say "I Love Fossil Fuels."

TURNING POSSIBILITY INTO REALITY

This year, your industry will lose billions of dollars because it has failed to win hearts and minds. The communications materials of the vast, vast majority of companies are not only failing to win hearts and minds, but they are also empowering the opposition by conceding their ideas. And it is completely unnecessary. There is a fundamentally different approach that makes sense and actually works.

If you agree with me, the implications are dramatic: Every fossil fuel company's internal and external communications, for every medium and every audience, needs to incorporate the moral case for fossil fuels and values-based communication. This includes finding and eliminating all instances of conceding that you are a "necessary evil" and, even more importantly, creating content that truly connects with and inspires your audiences.

This year, your industry will lose billions of dollars because it has failed to win hearts and minds.

The challenge here is that these cannot be learned or applied overnight—they are bodies of knowledge that take study and practice. So how can we apply them as soon as possible and as widely as possible?

In my experience, it is a combination of collaboration and education. At CIP we work with companies and associations on transforming their highest-leverage projects to truly win hearts and minds. We also train the highest-leverage communicators, giving them the mastery that can only come with intensive feedback. Just as important, though, we offer standalone educational resources that every CEO, communications professional, employee, or citizen can use to educate themselves in the moral case for fossil fuels and values-based communication. Right now, you have the ability to get, for free, at http://industrialprogress.com, hundreds of pages of books and articles, and dozens of hours of audio. And right now, you have the ability to contact me directly to discuss how you or your company can win hearts and minds.

Email me at alex@alexepstein.com to let me know you're interested in making this a reality.

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