Award Winning

The Override

Every Landman Wants One!

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LAAPL
Los Angeles Association of Professional Landmen

Presidents Message

Ernest Guadiana, Esq., President
Elkins Kalt Weintraub Reuben Gartside LLP

I trust everyone's new year is off to a great start, albeit with oil prices continuing to fall to levels not seen in years. I was having lunch the other day with a good friend who works in the oil patch. Although it seems shale plays are going offline, producers in California are weathering the storm due to the conventional plays that account for a good portion of California's production – which I guess is one benefit of the inactivity in the Monterey Shale.

Nevertheless, even with oil on the downturn (for the time-being), California has never had a more interesting energy industry than today. The California courts continue to issue new opinions requiring our state to become more energy efficient and dependant on renewables. Although these requirements may not be good for household energy bills, they may be good for land professionals.

I know 2015 was hard for many of our members, and with oil prices continuing to decline, the future may seem grim. But realistically, now is the time to hone our skills elsewhere.

In addition to a large amount of the renewable energy transactions happening, California continues to adopt new laws requiring the knowledge of professional landmen. For example, the Sustainable Groundwater Management Act, which requires the identification of all landowners that pump groundwater from the same basin, is clearly a task best suited for a person with a deep understanding of property rights and how to investigate them.

I am with all of you in hoping for the oil industry to come back in the near future. Even though OPEC has claimed to have defeated the shale revolution, it has hurt itself by allowing a number of its members to lose substantial revenues. This cannot and will not last forever. Eventually balance will come back to normal, and the oil industry will thrive again.

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Meeting Luncheon Speaker

"Evolutionary Non-response to Climate Change – Los Angeles La Brea Tar Pits"

Donald Prothero, PhD., taught college geology and paleontology for 37 years, at Caltech, Columbia, Cal Poly Pomona, and Occidental, Knox, Vassar, Glendale, Mt. San Antonio, and Pierce Colleges. Don earned his B.A. in geology and biology from the University of California Riverside and his M.A., M.Phil. and Ph.D. in geological sciences from Columbia University. He is the author of over 35 books and over 300 scientific papers.

The Rancho La Brea tar pits in Los Angeles are legendary late Pleistocene fossil deposits, yielding over 5 million fossils of mammals, birds, and many other organisms from about 35,000 years ago until about 9000 years ago, spanning the last glacial-interglacial transition. Conventional evolutionary theory has long argued that organisms should be highly responsive to such large changes in climate and environment. Dr. Prothero's presentation will discuss recent testing he was involved with showing to the contrary the conventional thinking.

Opinionated Corner

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

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

That is the usual theme in past January opening paragraphs of this column; except the fog which the oil and gas industry is experiencing this time around is not going to lift any time soon as we literally sweat it out with low oil and gas prices. Such is life in our cyclical boom and bust business. If we take the years I have been involved in the oil and gas business and divide by the 4 busts we have gone through, it averages out to be about 8.5 ± years between a boom and a bust. I should see one more cycle before I hang up the chaps and call it quits – does a landman ever leave the biz?

Here is the good news; a professional landman can parlay his or her experience into other areas of land work. In a recent issue of the *National Review*, in its "This Week" section, it reported Robert F. Kennedy, Jr. saying all climate change deniers should go to jail. There you go land professionals, get involved with governmental agencies empowered to condemn private property for public use and work on the entitlements and rights issues to get the land ready for prison development.

Even if we turned out all the current innocent prisoners currently residing in jails and prisons, there would still be the demand for more prison cells and beds to corral all those who are not fully swayed the earth is experiencing an enduring heat wave of the magnitude projected by the climate change soothsayers.

So that is one category of deniers Bob would like to see put away; what about the plausible climate change deniers; those who think about it but are reluctant to express their opinions depending upon the price of gasoline; or who could be influenced if it was reported by, say Wiki Leaks, that the climatologist in charge of measuring the earths temperature were cooking the numbers, pun intended. Just thinking climate change is a hoax we suspect is probably grounds for free room and board paid for by law abiding tax payers.

What about the rules for sentencing, there are guidelines the judge uses to calculate how much time a prisoner should spend being locked up. A life sentence could be ruled cruel and usual punishment, thus cause for early release. Not sure Bobby would want these ex-cons out on an early release program.

Furthermore, it would seem Rob should lean toward doing the same for those who oppose wind and solar farms merely based upon the esthetics to landscape or seascape; much less the plight of bugs, bunnies, midget bats with macular degeneration syndrome and desert tortoises. But that is not going to happen, you see, Junior is a NIMBY himself. His family and friends in high places have been fighting off a wind farm project which gets in the way of the family's seascape.

Not sure prison land work is going to come to fruition soon enough; besides, oil and gas prices could rebound sooner than later, and we are off again to the next bust.

Meanwhile, we have our annual joint luncheon with the Los Angeles Basin Geological Society this month. The topic? Something about climate change not showing up in the geological records at the La Brea Tar Pits in downtown Los Angeles. Not to worry climate change deniers, security will be tight.

New Members and Transfers

Cambria Rivard, JD
Membership Chair
California Resources Corporation

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

New Members

Aaron Botti
Partner
Ossentjuk and Botti
2815 Towngate Rd. Suite 320
Westlake Village, CA 91361

Kevin McNally
Land Manager
Chevron USA Inc
9525 Camino Medina
Bakersfield, CA 93311

Kevin Stubbs
Land Team Lead
Chevron USA Inc.
9525 Camino Medina
Bakersfield, CA 93311

Chris Flail
Landman
Chevron USA Inc
9525 Camino Medina
Bakersfield, CA 93311

Transfers

Brietburn and Pacific Coast Energy
515 S. Flower St, Suite 4800
Los Angeles, CA 90071

Now:

Brietburn and Pacific Coast Energy
707 Wilshire Blvd, Suite 4600
Los Angeles, CA 90017

2015—2016 Officers & Board of Directors

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John R. Billeaud
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661-395-5286

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310-795-2272

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PetroLand Services
310-349-0051

Golf Chairs
Jason Downs, RPL
Chip Hoover
Leah Hoover

LAAPL Nominations Committee

• Ernest J. Guadiana, Esq., Chapter President, has appointed **L. Rae Connet, Esq.**, of Petroland Services, Inc., as LAAPL's Nominations Committee Chair. Rae will be seeking out qualified candidates for officers. The officers will serve from July 1st, 2016 – June 30th, 2017. All qualified members interested in submitting their names as candidates are encouraged to contact the Committee Chair. Rae can be reached at 310-349-0051 or rconnet@petrolandservice.com.

• Per Section 7 (7a) of the By-laws, the membership will be provided with a list of nominees for officers for Vice President, Secretary, Treasurer and two (2) Directors at the March meeting. Further nominations from the floor will also be accepted at the March meeting. Members whose names are placed in nomination must give prior consent to be nominated by mail or email up to May 1, 2016. The election will take place at the last regular meeting of the Association this fiscal year, which is scheduled for May 19, 2016.

Scheduled LAAPL Luncheon Topics and Dates

January 28, 2016 [4TH Thursday]
Annual Joint Meeting with
Los Angeles Basin Geological Society
Donald Prothero, PhD.
"Evolutionary Non-response to Climate Change Los Angeles La Brea Tar Pits"

March 17, 2016
Clifford E. Clement, MacPherson Oil Company
"Renewables – Land Work Opportunities"

May 19, 2016
TBD
Officer Elections

Treasurer's Report

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

As of 4/1/2009, the LAAPL account showed a balance of	$26,683.37
Deposits	$455.00
Total Checks, Withdrawals, Transfers	$ 152.12
Balance as of 1/7/2016	**$26,986.25**
Merrill Lynch Money Account shows a total	$ 10,929.27

Sarah Downs, Chapter Treasurer will be calling for dues late Spring, which will be due by June 2016 for the 2016 – 2017 year. Cost: a mere bargain at $40.00.

Nominations for LAAPL 2017 - 2017 Officers

It is that time of the year to start considering a run for a LAAPL Chapter Officer for the 2016 – 2017 term. The following offices are open:

President[1]
Vice President
Treasurer
Secretary
LAAPL Local Director
LAAPL Local Director

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

Lawyers' Joke of the Month

Jack Quirk, Esq.
Bright and Brown

Father O'Leary, having rounded the corner to see Sean Flynn's furtive departure from the local market with a sack of apples from the sidewalk display, proclaimed loudly, "You're sure to pay for those apples in the life to come, Sean!"

Sean doffed his cap and sheepishly returned to the scene of his crime--only to again depart rapidly having doubled his load.

"So you say, Father," replied Sean, "and if you'll carry me on credit that long, I'll just have another."

Our Honorable Guests

- Many who wished to be there were present in sprit.

LAAPL and LABGS Hold Annual Joint Luncheon

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

When: Thursday, Jan 28th [Fourth Thursday of the Month]
Time: 11:30am
Cost: $20 with reservations
$25 without reservations

Meeting Place: The Grand at Willow Street Conference Center
4101 East Willow Street
Long Beach, CA

Speaker: Donald Prothero, PhD.,

Topic: "Evolutionary Non-response to Climate Change – Los Angeles La Brea Tar Pits"

Contact: Graham Wilson
562-326-5278
Gwilson@shpi.net
Online at www.labgs.org.

Guest Article

AB2 Passes Both Assembly and State Senate [Community Revitalization Investment Authorities]

Bernadette Duran-Brown, Esq., Partner
Law Firm of Nossaman LLP

On September 22, 2015, Governor Jerry Brown signed Assembly Bill 2, which will allow local governments to create Community Revitalization and Investment Authorities (CRIAs) -- a step some say is the rebirth of redevelopment. The goal of the bill is to allow government entities to "invest in disadvantaged communities with a high crime rate, high unemployment, and deteriorated and inadequate infrastructure, commercial, and residential buildings." The CRIAs will have many of the same abilities as the redevelopment agencies that the Governor previously dissolved: the power to issue bonds, provide low-income housing, prepare and adopt a plan for an area, and among others, the power to acquire property using the power of eminent domain.

AB2 has received mixed reviews. Some believe that the establishment of CRIAs will lead to eminent domain abuses. And others, including the Bill's proponent, state that AB2 will allow investment in poor areas so we can fix our existing neighborhoods. But how exactly will the new CRIAs work?

Creating CRIAs for Disadvantaged Communities

Beginning January 1, 2016, when AB2 goes into effect, there will be two ways to form a CRIA: (1) a city, county, or city and county together can create a CRIA, which will be administered by a five-member board appointed by the local government(s); or (2) a city, county, or special district, or any combination of those local governments, can create a CRIA by entering into a joint powers agreement, and the CRIA would be administered by members from the legislative bodies of the public agencies that created the authority. In either case, the body must include at least two members of the public who live or work in the area.

School entities and redevelopment successor agencies cannot participate in a CRIA and neither can a government entity that has not completed the wind-down process of its redevelopment agency and received a finding of completion from the Department of Finance.

CRIAs adopt a community revitalization and investment plan within a community and revitalization and investment area ("area"). At least 80% of the area designated must have an annual median household income that is less than 80% of the statewide annual median income and must meet three of the following four conditions:

1. unemployment is at least 3% higher in the area than the statewide median unemployment;
2. the crime rate is 5% higher than the statewide median crime rate;
3. the area has deteriorated or inadequate infrastructure; and
4. the area has deteriorated commercial or residential structures.

Under previous redevelopment law, redevelopment agencies were only required to conduct a study and make a finding that blight existed in a project area before they could use their powers to eradicate blight. But what was blight, really? Redevelopment agencies could theoretically fit almost anything into the definition of "blight", giving them sweeping powers to establish redevelopment areas without any immediate plans for redevelopment, thereby freezing the property tax base and appropriating all property tax increases that were simply due to general increases in property values over time. Though some opponents of AB2 believe the study a redevelopment agency had to complete was a more stringent test than the above-conditions created by AB2, it appears the legislature is attempting to require a greater finding by a CRIA before it can declare an area appropriate for revitalization. Plus, the inclusion of at least two community members on a CRIA board implies that the CRIA's actions can and should be influenced or guided by local community input.

Powers of CRIAs

CRIAs can (1) fund the rehabilitation, repair, upgrade or construction of infrastructure, (2) provide low and moderate-income housing, (3) clean hazardous waste, (4) provide seismic retrofitting to existing buildings, (5) acquire and transfer

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real property, (6) issue bonds, (7) incur debt, (8) adopt a community revitalization and investment plan, (9) make loans or grants for rehabilitation or retrofitting of buildings in the area, (10) construct structures necessary for air rights, and (11) assist businesses in connection with new or existing facilities for industrial or manufacturing uses.

A CRIA plan may include a provision for the receipt of tax increment funds. Like the former redevelopment agencies, CRIAs would freeze the property taxes of the area at the time the plan is approved and then collect the increased tax increment to use on specific activities. In another notable divergence from redevelopment law, the taxing entities in the plan area, like cities, counties and special districts, must agree to divert tax increment to the CRIA. Under prior redevelopment law, local agencies had no say in the process; redevelopment agencies could designate large areas for redevelopment, and the property tax funds the local agencies would otherwise receive were essentially capped because the property tax base was frozen. Forcing taxing entities to agree to divert their tax increment to CRIAs seems to limit the power of the CRIAs and may help eliminate concerns that CRIAs are including wide swaths of land in the plan area just to appropriate increased property tax revenues.

Another small change from prior redevelopment law is that at least 25% of all tax increment revenues received by the CRIA must be deposited into a separate Low- and Moderate-Income Housing Fund and must be used by the CRIA to increase, improve and preserve the community's supply of low- and moderate-income housing. This was increased from the 20% former redevelopment agencies had to set aside for affordable housing. The new law also has detailed requirements which control the use of the Housing Fund revenues and detailed accounting and reporting requirements

The Plan Adoption Process

The CRIA must consider adoption of a plan at three public hearings 30 days apart to (i) first hear comments, then (ii) consider additional comments and modify or reject the plan, and finally (iii) conduct a protest proceeding where the CRIA board considers the written and oral protests to the plan's adoption by property owner and residents, and ultimately makes a decision to terminate the proceedings or adopt the plan. Though the residents of the area are allowed to be heard at the

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hearings and protest the plan's adoption, the law may set an unreasonably high threshold for actually rejecting the plan. The plan will only be rejected if protests have been filed by over 50% of the property owners and residents in the area. If between 25% and 50% of the property owners and residents file protests, then an election will be called to confirm the plan – and the plan will only be rejected if a majority of the owners and residents vote against the plan. If less than 25% of property owners and residents file protests, the plan can be adopted at the third hearing by ordinance. A new protest proceeding must be held every 10 years.

Impacts to Low-Income Housing

Some opponents of AB2 say it unfairly targets poor communities, but there appear to be some protections built into the law itself. For instance, if the plan calls for the destruction or removal of low- or moderate-income housing, the CRIA must provide an equal number of units for sale or rent to low- or moderate-income persons and families within two years. In addition, any CRIA plan must include a relocation plan for displaced persons and the CRIA must comply with the state's relocation laws. And AB2 prohibits the number of housing units occupied by extremely low, very low- and low-income households from being reduced during the plan's lifetime.

Long-Term Impact is Unclear

While local government agencies may be rejoicing the creation of CRIAs, it is unclear how the new law will actually impact disadvantaged communities. Will it provide local governments the tools to invest in their communities and rehab infrastructure in desperate need of repair? Will it cause the gentrification of urban areas generally occupied by low-income households and minorities, only to replace their residences with private development projects which make developers wealthy but disenfranchise entire populations? Will it help revitalize run-down communities, building on existing infrastructure to preserve neighborhoods and provide local residents with access to safe and affordable housing and buoy local businesses? Will local governments take this as a call-to-action to clean up hazardous waste and protect their low- and moderate-income residents and their homes? Or will this be a great big mess? These are only a few of the many questions still lingering about AB2. And there are few, if any, answers.

Moreover, in a potential competition with CRIAs, Governor Brown also signed AB313 on September 22, which enhances the powers of Enhanced Infrastructure Financing Districts (EIFDs), another type of tax increment financing entity the Legislature created last year. AB313 allows local governments to form public financing authorities and invest in infrastructure projects using tax increment funding streams. Will the EIFDs and CRIAs be fighting over the same pot of funds? Or will they complement one another, giving local governments even more strength to implement public projects?

As we delve deeper into the law's many, many sections, look for more detailed discussions on our blog, the California Eminent Domain Report, regarding tax increment financing, CRIAs' right to acquire property, the eminent domain powers and limits of the CRIAs, along with further updates when the law takes effect next year.

Ms. Duran-Brown can be reached at bduran-brown@nossaman.com.

Obituary

Robert L. Armantrout (1943 – 2015)

Robert L. Armantrout passed away on 29 December 2015 at Hoag Memorial Hospital in Newport Beach, California. He was born on 2 April 1943 in Lima, Ohio, to Henry W. Armantrout and Dorothy Ann (Foltz) Armantrout, as one of three brothers. Bob graduated with the Lima Senior High Class of 1961 and then attended Ohio State University. He later moved with his parents in 1962 to Southern California, where he found work with a title company in Los Angeles and was recognized for his attention to detail.

His father, who was a big band leader and owner of the Zender Music Store in Lima, helped Bob to learn to play jazz on the acoustic guitar. Bob joined a small combo led by organist, Lee Durley, and traveled up and down California with the "Three Easy Pieces" group playing at various night clubs. Realizing the limitations of what he could earn as a road musician, he then found work "running title" for an oil and gas lease acquisition firm in California that later led to his becoming an independent title consultant.

Bryan Stanek, a close friend and colleague, contributed much to this obituary on how Bob consulted for many companies of varying sizes including Buttes Resources, Exxon, Mobil Oil and finally The Termo Company in Long Beach, California. In the early years, his consulting work required him to be on the road more often than not, tackling projects as varied and widespread as oil and gas plays in Washington, geothermal in Nevada, coal in North Dakota, Rights of Way in Connecticut, and uranium in New Mexico.

During later years, he enjoyed a steady diet of desk jobs in Denver, Houston and Long Beach, primarily working on oil and gas projects in the Rockies, Texas and California. Bryan Stanek introduced him to David Combs, President of The Termo Company and Bob was hired and remained as a consultant for more than 15 years. Bob will long be remembered in the oil community for his professionalism as an "oil and gas" landman, as well as for his kindness, sincerity and generosity.

David Combs wrote to his employees "Bob had a wide variety of oil industry contacts across the country and these were so valuable to your company on many occasions. He was so capable of analyzing lease submittals that we often received on our mineral holdings around the country. I am confident that Bob not only saved your company money, but made us money. Bob labored through agreements with other industry partners that may have been unfair to us and usually negotiated a fair middle ground."

Bob made many friends throughout the country wherever he went. He was always first to raise a toast to the good times that carried him through thick and thin. He loved being able to finally move back to Orange County to help care for his parents in their later years and his younger brother. Bob had a love for photography and many of his industry shots graced the cover of the Landman magazine over the years. He also collected local art that was displayed in his home and work offices from many job sites.

Bob will be sorely missed in many ways, not the least of which was his ever-present sense of humor. He resided in Costa Mesa, California, from 1999 – 2015 and is survived by an elder brother, Jon Armantrout of Mountain View, California. He was predeceased by a younger brother, James Armantrout in 2010, his mother, Dottie Armantrout in 2010 and his father, Hank Armantrout in 2007, of Costa Mesa, California. He was a member of Orange County Musicians' Association Local 7, American Federation of Musicians.

Legislative Update

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

Rendon Officially Takes Overs as Speaker

One of the first tasks of the legislative session which began this month was the formal election of Anthony Rendon (D-Paramount) as Speaker of the Assembly; (though officially he takes over March 1). Rendon, who could hold the post up to ten years, has a history of being a supporter to the environmental policies of Governor Brown and is a close ally to Sen. Kevin De Leon (D-Los Angeles), author of SB 350.

Congress Introduces Bill to Increase Price of Leases on Federal Land

Earlier this month, a pair of Democratic lawmakers introduced legislation to raise the amount of money oil and gas companies pay the federal government for leases on public land. The House Bill, H.R. 4389, introduced by Reps. Alan Lowenthal of California and Raúl Grijalva of Arizona, would raise the royalty rate from 12 percent to 18.75 percent.

Perez Named as New Chief of California BLM

Jerry Perez, former State Director of the BLM Oregon/Washington Office, will take over the same position in California, replacing Jim Kenna, who retired in October of last year. Perez is now on board for the Bureau of Land Management (BLM) in California. Perez started in his new position on January 11, succeeding California State Director Jim Kenna who retired in October 2015.

As the California State Director, Perez will oversee the management of 15.2 million acres of public lands, nearly 15 percent of the state's land area, and 1.6 million acres in northwestern Nevada. BLM California also administers 47 million acres of subsurface mineral estate underlying federal surface land, 2.5 million acres underlying privately owned land, and 592,000 acres of Native American tribal land where BLM has trust responsibility for mineral operations.

SOCALGAS Gets OK for Local Electric Power

With solar and wind power making distributed generation an increasing factor in California's market, utilities face the challenge of covering their fixed costs. A new tariff issued by California to Sempra Energy's Southern California Gas Co. aims to benefit utilities and their customers.

The state's Public Service Commission has issued its first Distributed Energy Resources Service (DERS) tariff to SoCalGas. The DERS tariff allows SoCalGas to own and operate Combined Heat and Power (CHP) facilities on or near a customer's location, and provide output from the CHP to the customer at regulated prices. The tariff also creates a regulatory framework for "competitive micro grids," which use local or on-site power generation to serve a customer or group of customers, using CHP or cogeneration technologies. That local output, plus reduced costs to transmit the power, can result in lower costs, and can allow greater competition between suppliers.

California has set a target for new CHP installations capable of generating 4000 megawatts (MW) by 2020. A recent study by the Commission said adoption of CHP in the state has been slow; without DERS, output would likely be less than 50% of the target.

SoCalGas told the Commission that the biggest potential for CHP is for systems producing 20 MW or less, at commercial buildings, hospitals, university campuses and similar facilities. The Commission's decision to issue the tariff followed more than year of hearings and studies of its potential impact on competition, cost and pricing methodologies.

A major issue was whether SoCalGas, as a gas utility, should own and operate electric generating facilities, and whether that required it to be regulated as an electric utility. The Commission decided that, because SoCalGas does not intend to distribute the power to customers outside the areas served by the CHPs, and will not own the energy the CHPs produce, it does not need additional regulation. The Commission also decided that customers served by a CHP will be permitted to export excess electric power to the grid, selling up to 25% of their output to electric utilities.

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Oil Producers Will be Impacted by Governor's Proposed Budget

Earlier this month, Governor Brown released his 2016-17 budget plan. The $122.6 billion budget proposal would allocate $3.1 billion from the Cap and Trade Expenditure Fund towards programs with the goal of reducing petroleum usage in the transportation sector by 50%. The spending plan also proposes a total of $2.7 million from the General Fund for the Division of Oil, Gas; Geothermal Resources (DOGGR) administrative's fund, 2 positions to create a comprehensive training program for regulatory staff, and 10 positions for increased gas pipeline safety inspections.

The Governor's January budget proposal is the starting point for negotiations with the Legislature over a final state spending plan. Governor Brown will present a revised budget proposal in May which reflects the state's tax receipts. Lawmakers will have until June 15 to pass a budget bill or risk losing their pay. California's new fiscal year begins July 1.

Job Opportunity

Cal Pacific Land Services, Inc. is looking for a Landman/Right of Way Agent to assist in administering right of way agreements. Real Estate/Right of Way/Lease Administration experience with public agencies, land/right of way consultants, or public utilities preferred. Holding a current California Real estate license is a plus.

The job requires the ability to read, understand, and summarize leases and other right of way agreements, track insurance and request policy update information, track renewal dates, track and follow-up on delinquencies, prepare reports and maintain spreadsheets. The chosen candidate will assist client staff in preparing correspondence and tailoring form letters as well as other duties.

Being a self starter and able to work independently is prized. We offer room for growth for the right candidate.

Cal Pacific is a Orange County right of way consultant with offices in Garden Grove.

Please note our new address and telephone number.

Charles Wadell
President
BRE No. 00885831
Cal Pacific Land Services, Inc.
7245 Garden Grove Blvd., Suite M
Garden Grove, CA 92841
714/799-0900
Cell 714/679-9091

Important Changes in Litigating Oil and Gas Cases in Federal Court: What the 2015 Amendments to the Federal Rules Mean for Oil and Gas Companies

By Nicholas Ranjan, Esq., Partner
David I. Kelch, Esq., Associate
Law Firm of K & L Gates

Many oil and gas disputes are litigated in federal court. This includes many land disputes, including bonus payment and fraud claims involving execution of oil and gas leases or claims against landmen and leasing companies. In recent years, federal litigation has undergone significant changes in discovery practices and rules. For example, with the increase in electronically stored information, like emails and text messages, the federal and local rules have changed to ensure that such electronically stored information, or "ESI," is preserved and disclosed. The problem that many companies face, however, is that the costs of preserving, collecting, reviewing, and producing ESI as part of federal litigation can be extraordinarily high. This is particularly acute in cases against oil and gas companies that involve historical information, payment information, and large numbers of plaintiffs or claimants (e.g., payment, royalty, class actions, and mass contamination cases).[1] Similarly, even in "routine" cases—like oil and gas lease disputes—where the collection of ESI may extend to email accounts and text messages of landmen and other land personnel and agents in the field (sometimes on non-company servers), e-discovery costs can be disproportionate to the issues at stake.[2]

The high costs of e-discovery in federal litigation recently spurred the Supreme Court of the United States to amend the federal rules in a manner that has the potential to narrow the scope and limit the cost of expensive e-discovery. This has the potential of assisting those oil and gas companies that litigate in federal court in reducing and managing their defense costs, particularly in this challenging economic environment.

Below is a summary of the proposed amendments (which would go into effect on December 1, 2015, absent congressional legislation opposing or altering them), and the potential effect of the changes on oil and gas litigation in federal court.

Summary of the Amendments

The proposed amendments can be grouped into three categories: (i) early case management; (ii) proportionality of discovery; and (iii) preservation of ESI.

The early case management amendments are largely designed to spur "earl[y] and more active judicial case management."[3] They include an amendment that decreases the deadline to serve a complaint and summons (from 120 days to 90 days), in order to expedite the start of a case.[4] They also include changes in the sequencing and manner of early conferences with the court, and the manner in which objections to discovery can be stated.[5]

Of greater consequence, the second category of changes is designed to eliminate disproportionality between what is at stake in litigation and discovery. For example, new Rule 26 recognizes that "the costs of discovery in civil litigation are too often out of proportion to the issues at stake in the litigation[.]"[6] With that in mind, the new rule limits the scope of discovery to that which is "proportional to the needs of the case[.]"[7] Importantly, this means that the new Rule 26(c)(1) will be amended to include "the allocation of expenses" among the terms that may be included—in other words, if certain ESI must be produced by a company, the other side may have to pay for the expense involved.

The final category of changes is designed to clarify the law regarding the spoliation of discoverable information. The new Rule 37(e)—a complete rewrite of the rule—was developed to "establish[] greater uniformity in how federal courts respond to the loss of ESI."[8] The new rule only allows serious sanctions for spoliation (i.e. the intentional, reckless, or negligent withholding, hiding, altering, or destroying of evidence relevant to a legal proceeding) where the spoliating party "acted with the intent to deprive another party of the information's use in the litigation."

A Few Key Effects of the Amendments on Federal Litigation

The most important effects of the amendments concern those related to the proportionality of discovery and preservation of ESI.

First, the scope of discovery is now limited to that which is "proportional." In other words, courts will not permit discovery into expensive ESI, without a cost-benefit analysis. Before initiating discovery, courts are likely to hear conflicting

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estimates of the costs and the benefits of discovery. Using "extrinsic information," such as "whether the requested information was created by 'key players,'"[9] and evidence samples[10] will likely be important to a cost-benefit analysis. Further, where expensive e-discovery is required from an oil and gas company, that company may have the ability to allocate the costs to the other side.

Second, while it still remains critical to preserve potentially relevant ESI, the new changes to the rules are more forgiving when a party has inadvertently failed to do so. In the past, failure to preserve certain ESI could lead to sanctions, including preventing a party from introducing certain evidence or permitting the jury to infer an adverse fact simply because evidence was not preserved. The new rule would appear to prohibit such a severe result for inadvertent mistakes.

***

The creative oil and gas litigator will leverage the new changes to the rules so that oil and gas litigation in federal court—particularly during the discovery stage—will be more proportional and less costly. For landmen and companies in the industry that face litigation that involves ESI (e.g., payment, royalty, class actions, and mass contamination cases) the changes may be beneficial in managing and defending litigation in a cost-effective manner.

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Notes:

[1] In a recent study of Fortune 500 companies, the RAND Institute found that the median total cost for ESI production among participants reached the astounding sum of $1.8 million dollars per case. Nicholas Pace & Laura Zakaras, Rand Institute for Civil Justice, *Where the Money Goes: Understanding Litigant Expenditures for Producing Electronic Discovery*, 28 (2012).

[2] In a "survey of the ABA Section of Litigation, 78% of plaintiffs' attorneys, 91% of defense attorneys, and 94% of mixed-practice attorneys agreed that litigation costs are not proportional to the value of small cases, with 33% of plaintiffs' lawyers, 44% of defense lawyers, and 41% of mixed-practice lawyers agreeing that litigation costs are not proportional in large cases." See Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, *Report of the Judicial Conference Committee on Rules of Practice and Procedure*, at B-6, B-7 [hereinafter Final Report], available at http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/Reports/ST09-2014.pdf.

[3] Final Report at B-11.

[4] Final Report at B-11.

[5] Under new Rule 16(b)(1), scheduling conference will not now take place "by telephone, mail, or other means[,]" but are likely to be in person. Additionally, under new Rule 34, objections to discovery requests may not be boilerplate, but must be stated "with specificity" and must state "whether any responsive materials are being withheld on the basis of that objection."

[6] Final Report at B-22.

[7] Rule 26 currently allows "discovery regarding any nonprivileged matter that is relevant to any party's claim or defense[.]" The new Rule 26 limits this general scope to discovery of that which is "proportional to the needs of the case[.]"

[8] Final Report at B-15.

[9] *The Sedona Conference Commentary on Proportionality in Electronic Discovery*, 14 Sedona Conf. J. 155, 166 (2013).

[10] Id. at 165–66.

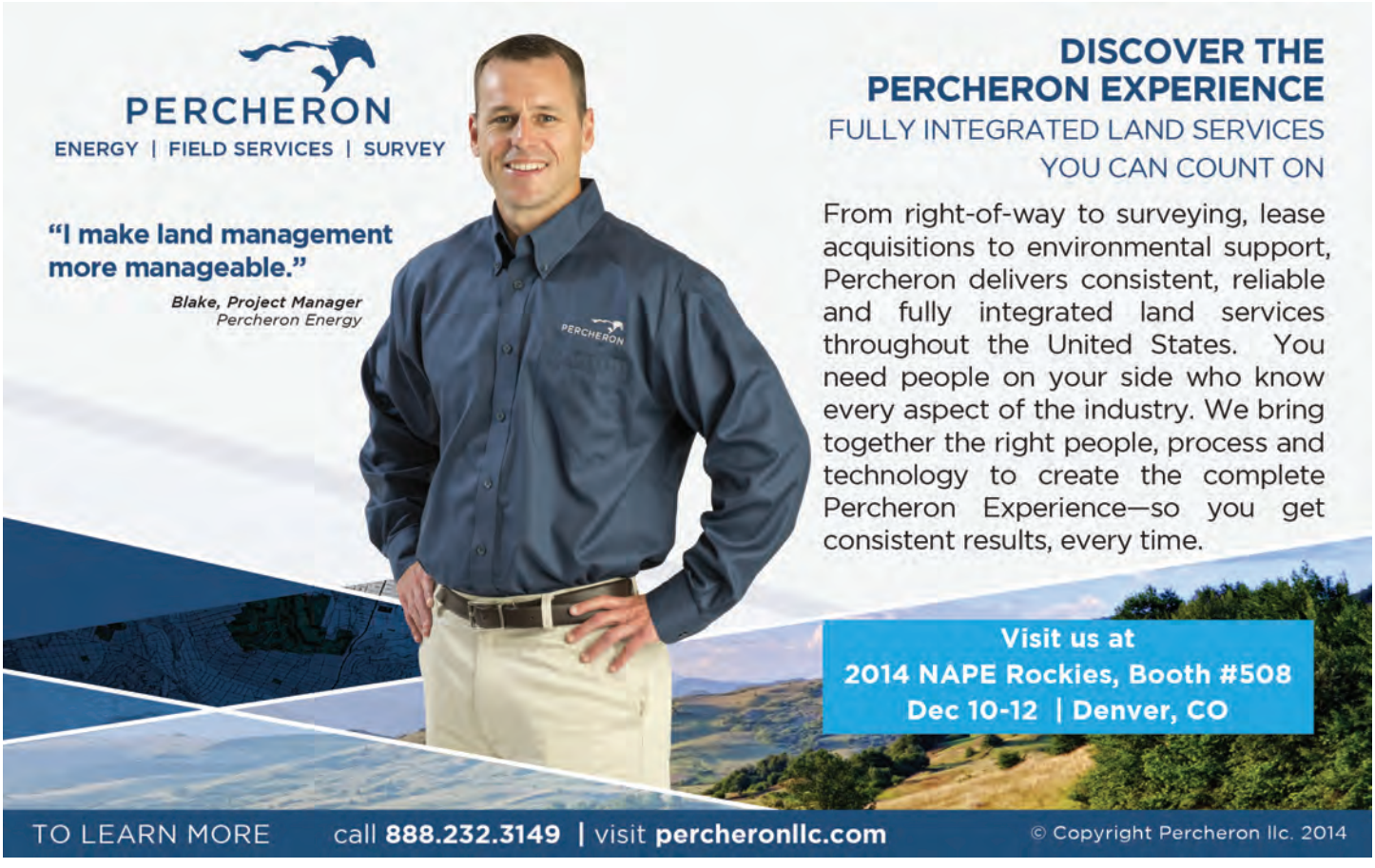
Chapter Board Meetings

Cliff Moore
Independent
Chapter Secretary

The LAAPL Board of Directors and Committee Members held their regular meeting Thursday, November 17, 2015 led by President Ernest Guadiana. The matters discussed at the November meeting are as follows:

- Voted to ask the approval of the membership to donate to the Pyles' Boys Camp a pre-approved sum.
- Approving new membership.
- Discussed finding new avenues for professional landmen as employment opportunities.
- Other issues pertinent to the operations of LAAPL

The LAAPL Board of Directors and Committee Chairs normally hold its Board Meetings in the same room as the luncheon meeting after the speaker has wowed us. We encourage our members to attend the meetings to see your Board of Directors and Committee Chairs in action.



"Shell Game Exposed: Why a Conditional Final Offer by a Condemnor under CCP 1250.410 is Illusory and per se Unreasonable"

by Mike Rubin, Esq., Partner, Rutan & Tucker, LLP

RE: City and County of San Francisco v PCF Acquisitionco, 237 Cal. App 4th 90 (2015)

Simply put, this condemnation case held that a statutory final offer made by the City of San Francisco before trial (under California Code of Civil Procedure § 1250.410) is per se unreasonable, effectively not an offer at all, if it is subject to a condition that it is not binding unless later approved by the governing body of the public entity. As a result, the public entity will be required to pay the condemnee's litigation expenses, including reasonable attorneys' fees, if the trial court finds that the condemnee made a timely final demand that was reasonable. This conclusion would almost seem self-evident, but the trial court had ruled the other way, and until the appellate court reversed in this case, there had never been a case in California on the point. Apparently, it has not been unusual for various public entities to make such conditional final offers in condemnation cases.

The trial court had found the final offer made by the City to be reasonable, though its offer was $5,000,000 and the jury had awarded the property owner $7,319,000. The property owner had demanded $8,600,000 plus costs and interest. The trial court's reasoning was that the City's final offer exceeded its own appraisal by $1,872,000 (or by 60%), and the City did not stubbornly adhere to its own valuation. The property owner appealed the trial court's ruling on the basis that the final offer was not an offer at all, since it was subject to later approval by the governing bodies of three different public entities. The appellate court agreed with the property owner, viewing the final offer merely as a non-binding recommendation to enter into a settlement. If the property owner accepted the "offer", there was no assurance that there would be a settlement since one or all of the governing bodies required to approve the offer, might not do so.

The City argued that it had no choice but to make its offer conditional because it typically takes 6 to 8 weeks for its governing body to approve a settlement and the final offer had to be made 20 days or more before trial, insufficient time to go through the process of obtaining that approval. Moreover, it argued that the exchange of valuation data does not occur until 90 days before the trial date (CCP 1258.220) and depositions do not occur until much closer to the trial date, so that by the time the other side's appraisal can be understood and assessed, there is insufficient time to obtain governing board authorization of a final offer. The appellate court ruled that these logistical problems were not justification to override the requirements of the condemnation law, as expressed in the final offer and demand provisions in CCP 1250.410.

It should be noted that the appellate court drew upon one analogous prior case in reaching its decision, People ex rel. Dept. of Transportation v Zivelonghi (1986) 183 Cal. App. 3d 187. In that case, another appellate court ruled that a final offer was unreasonable for purposes of CCP 1250.410, if the offer was subject to a reserved right to appeal. For example, if the trial court makes an evidentiary ruling adverse to the condemnor, the condemnor might determine to make a liberal pre-trial offer, but include terms that allow the condemnor to appeal the unfavorable ruling, and further provide that if the unfavorable ruling is reversed on appeal, the offer is invalidated, and the case will then go to trial. Under such circumstances, the appellate court in the Zivelonghi case already ruled that such an offer was unreasonable, per se.

Lessons Learned and Practical Recommendations:

The condemnation law in CCP 1250.410 creates an incentive for a condemning agency to make a reasonable final offer at least 20 days before trial and for the property owner(s) to make a reasonable final demand. The incentive is the potential award to the condemnee of its reasonable litigation expenses if the public entity's final offer is found to be unreasonable, and the condemnee's final demand is found to be reasonable, in light of the evidence admitted and the award made at trial. While negotiating staff of public entities may, and almost always do, make settlement offers that are conditioned upon the later approval of the governing board of the public entity; that is not permissible for the final offer under CCP 1250.410 which triggers the potential entitlement to an award of litigation expenses. If the public entity's procedures provide for a lengthy process to obtain approval of offers, the process must be started early enough to conclude before the final offer is made by the public entity, i.e. more than 20 days before trial. Either the public entity will need to change its rules to provide for a faster approval procedure or the public entity's attorney will have to find a way to get the trial court to order an early exchange of valuation data, much earlier than the normal 90 days before trial.

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Educational Corner

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

United States Department of Interior [BLM] Seminar BLM is planning its seventh day-long seminar for all Federal Operators on Wednesday, February 3, 2016, at Aera Energy's Bakersfield Office located at 10000 Ming Ave. The purpose of the seminar is to provide an update for federal operators on their responsibilities on federal leases and information on permitting, leasing, assignments/ transfers, bonding, field operations, commingling, environmental and idle well requirements and many other items of importance. Please click here to link to the brochure at the end of the newsletter for further information and cost.

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 oror LAAPL's Education Chair James Pham at (949) 500-0909 or jdpham@email.com.

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United States Department of the Interior
Bureau of Land Management
Bakersfield Field Office
3801 Pegasus Drive
Bakersfield, California 93308-6837
www.ca.blm.gov/bakersfield

To: All Federal Oil and Gas Operators

Re: Seminar for Federal Oil and Gas Operators

BLM is planning its seventh daylong seminar for all Federal Operators on Wednesday, February 3, 2016, at Aera Energy's Bakersfield Office located at 10000 Ming Ave. The purpose of the seminar is to provide an update for federal operators on their responsibilities on federal leases and information on permitting, leasing, assignments/transfers, bonding, field operations, commingling, environmental and idle well requirements and many other items of importance.

Cost of this all day seminar will be $50 per person, which includes all handouts, snacks, and lunch. The seminar begins at 7:45 a.m. and will be finished by 4:00 p.m., after which BLM staff will remain to discuss and answer questions one-on-one in a more informal setting. To confirm your reservation, please send your check with a list of those who will attend by January 8, 2016.

Make checks payable to USDI- BLM and mail to:

Attn: Wanda Oats
Bureau of Land Management
3801 Pegasus Dr.
Bakersfield, CA 93308

Please include your name, phone number, and "BLM Operator Seminar" on your check. Also, please include email contact information for all those who are registering. This will enable us to provide more detailed last minute updates in a timely fashion.

If you wish to register after January 8, please call Ms. Wanda Oats at (661) 391-6132 to see if there is space remaining for late registration. For questions, please call Jeff Prude at (661) 391-6140 or John Hodge at (661) 391-6020.

This program will benefit everyone who operates on BLM land or is involved in any way in the permit process, including engineers, landmen, drilling personnel, production accountants, permit technicians, field technicians, contractors, and surface owners. BLM staff will be present to answer questions during breaks and afterwards. We strongly encourage all operators and contractors who work on BLM projects to attend. A draft agenda is attached – a final agenda will follow.

Seating may be limited, so register early. If there are others in your company who you think would benefit from this seminar, please pass this invitation on. We hope to see you there!

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Seminar for Federal Oil and Gas Operators
Presented by the
Bureau of Land Management at
Aera Energy LLC Bakersfield
10000 Ming Avenue
Bakersfield, California 93311
8:15 a.m. - 3:45 p.m., February 3, 2016
Draft Agenda

	Start
Registration	7:45-8:15 a.m.
Welcome & Housekeeping	8:30
Overview	8:40
Electronic Permitting	8:50
Application Processing	
APDs	9:00
Sundries	9:20
Environmental Requirements (NEW)	9:35
Break	10:00
Commingling (NEW)	10:15
Venting and Flaring (NEW)	10:25
Idle/ Orphan Well program	10:35
Inspection & Enforcement	10:45
Compliance (WOs & INCs)	10:55
Spill report	11:05
Onshore Orders	11:25
Operations	11:35
PARs	
Safety & H2S	
Site Security	
Environmental (NEW)	11:45
LUNCH	12:00
Leasing	12:55 p.m.
Assignments	1:10
Transfers & Bonds	
Bond Reviews (NEW)	
Geophysical	1:30
Rights-of-Way	1:40
Cultural & Paleontological Resources (NEW)	1:55
Biological Resources	2:10
Break	2:25
Restoration (NEW)	2:40
Best Management Practices (BMPs)	2:55
Online Information	3:10
HF Rules (New)	3:25
MOU with CDOGGR	3:35
Conclude - (evaluations)	3:45 p.m.

#Agenda subject to change#

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