



The Override

Every Landman Wants One!

Volume X , Issue II

March, 2016



Presidents Message

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

I hope everyone has been managing this wet winter so far. For me, the past few months have seem to go by a little quicker than usual. Maybe that has something to do with the price of oil seeming to recover.

There has been a lot of happenings in the oil and gas industry recently. We've seen some company's fall into bankruptcy, and others seem teetering that line. However, others seem to have found a way to manage this downturn, and are preparing themselves to reap the rewards once prices recover.

It's funny how these cycles work. When the real estate industry tanked a few year ago, some real estate companies started



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to develop their mineral rights instead of developing the land into residential and commercial communities. Now, it seems like the opposite is happening.

I want our members to remember that these cycles have always come and gone, and its up to us to evolve to meet the times. Although oil and gas may not be the hotbed industry in California that it was the past few years, the economy in California is still going strong. Renewable energy has generated a lot of buzz, as well as residential and commercial land development – two industries our members are well suited to join.

At our March meeting, Cliff Clement will be speaking on changing industry sectors. He is one of the many people who successfully moved from oil and gas into renewable energies. I hope many of our members will be able to attend the meeting to hear what he has to say and learn what is going on outside the oil and gas sector.

Of course, in the meantime, I'll continue wishing the price of oil and gas recovers sooner rather than later (seeing WTI go over \$40/bbl was a nice start).

Meeting Luncheon Speaker

“Transferable Land Skills – Oil and Gas or Alternative Energy”

Cliff Clement currently serves as Vice President of Land for Macpherson Oil Company in Santa Monica. He has more than 35 years of land related energy experience. Cliff has extensive upper management experience in oil/ gas and alternative energy land work.

Companies where he held those management positions are Atlantic Oil Company and Stocker Resources (Plains Exploration and Production) as well as independent power producers Calpine Corporation and Third Planet Windpower.

In 2001, he moved to northern California and became the Director of the Western Region Land Department for the Calpine Corporation where he and his team handled all land issues related to the development, building and financing of 40 natural

Luncheon Speaker
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Opinionated Corner

**Joe Munsey, RPL
Director**

**Publications/Newsletter Co-Chair
Southern California Gas Company**

There is an exuberance of wealthy compensation for someone who can predict, at the very least, stable oil prices for 2016. Substantial advantageous opportunities increase if one is able to engage in predictable soothsaying as to when rising oil prices shall return. The operative word is “shall.” Apply as soon as is practicably possible to the nearest energy inclined banking institution or Wall Street firm. Please – the oil and gas world is waiting.

Over the past year or less, there has been quite the coverage in media on the grandchildren of the 1960’s Berkley Free Speech Movement. If you can recall, the Free Speech Movement was bred at the University of California Berkeley campus during the turbulent 1960’s. Some good, some not so good, or perhaps it is best remembered by a song, “Let It Out [Let it All Hang Out!” by the one hit Memphis, TN band, The Hombres.¹

Fast forward to the present and we have college students [grandchildren of the Free Speech Movement] at some very prestigious Ivy League Schools still holding on to the basic tenets of the movement; except if the speech is contrary to their beliefs. Thus the need for “safe rooms” if the speech is not to standard, or the alternative, just shut down the speaker by revoking his/her invitation to do some Free Speech Movement rhetoric.

One wonders if the progenitors of the Movement ever thought it would come to the place where subtle speech codes would trigger angst and fear amongst the generation thrice removed from its

inception in the 60’s. The real challenge when engaging in conversation today is in knowing which indirect speech code(s) cause(s) those triggers to go off.

On the other side of the aisle, where the heated rhetoric is allowed, is Sandra Steingraber, co-founder of New Yorkers Against Fracking, presumably a latter day saint of the Free Speech Movement, expressing her opinion about fighting the infrastructure needed to support the increasing demand of natural gas to Gotham City. In her speech at a rally organized around Governor Cuomo’s State of the State address, she proclaimed, “We seek to replace every burner tip—from power plants to basement furnaces—with energy systems that look up—to the sun and the wind—instead of down at the graveyards of Devonian fossils.”

She continued, “Governor Cuomo, we want you to tell the world that New York is so done with keeping the lights on by **building more crematoria for the burning of more prehistoric plants and animals**, [emphasis added] whose extraction from the ground and transportation to the flame destroys our climate, our water and our health. An end to fossil fuels is our united goal.”

Let’s see here, “crematoria for the burning of prehistoric plants and animals.” It reminds me of crematoria factories built to destroy human beings in the 1940’s somewhere in Europe. Holy cow! I need to high tail it to a safe room before Sandy turns her virulent hyperbole toward oil/gas professionals for causing all her torments in life.

Here’s just the place to go where prehistoric plants and animals are worshipped and quite an effort goes into finding them, a gathering place of like-minded individuals who support the oil/gas finders of the world. Where, you ask? At the Long Beach Petroleum Club on March 17th where Cliff Clements, a former past president of LAAPL, discusses parlaying petroleum land work experience into alternative energy land work.

¹An interesting side note, when my mother was finishing a gospel album in Nashville in the 1960’s, the recording engineer, whose name escapes me, turned to us with a gleam in his eyes and asked us to listen to a recent session he had taped. The album was about to be pressed and he was willing to give us the pleasure of hearing it before it hit the air waves.

It was... Wait for it...“Let it Out [Let it All HangOut].”

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

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Partner

Ossentjuk and Botti

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Westlake Village, CA 91361

Kevin McNally

Land Manager

Chevron USA Inc

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Bakersfield, CA 93311

Kevin Stubbs

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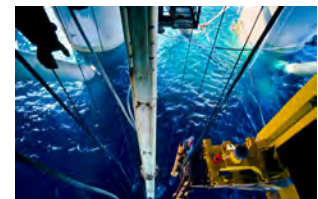
Bakersfield, CA 93311

Transfers

None to Report

Corrections

None to Report



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."

Our Honorable Guests

January's luncheon was a successful joint meeting with the LABSG and LAAPL Chapters held at the Grand at Willow Street Conference Center. LAAPL's guest of honor who attend the joint meeting:

- Jim Althen, Secretary/Treasurer of Petroleum Landowners Corporation, Ltd.



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2016 2017 Officer Elections

2016 – 2017 Officer Election

Ernest J. Guadiana, Esq., Chapter President, appointed L. Rae Connet, Esq., of Petroland Services, Inc., as LAAPL's Nominations Committee Chair. The list of qualified candidates¹ has been set forth below and the elected officers will serve from July 1st, 2016 – June 30th, 2017. **Additional nominees may be submitted to Rae Connet, Esq., rconnet@petrolandservice.com to be included on the final candidate's list until May 19, 2016, which will be published in the May newsletter.** Officers will be elected by a vote of membership in attendance at the May 19, 2016, chapter meeting held at the Long Beach Petroleum Club. Nominations will also be accepted from the floor at the May 19, 2016, regular meeting.

President² John R. Billeaud, Freeport-McMoRan Oil and Gas
Past President^{3 & 4} Ernest Guadiana, Esq., Lock Lord LLP

OFFICE

CANDIDATE

Vice President	<input type="checkbox"/> Sarah Bobbe, CPL, Signal Hill <input type="checkbox"/> <input type="checkbox"/>
Secretary	<input type="checkbox"/> Cliff Moore, Independent <input type="checkbox"/>
Treasurer	<input type="checkbox"/> Susy Husner, Independent. <input type="checkbox"/> Jason Downs, RPL, Breitburn
Directors (Vote for two only)	<input type="checkbox"/> Joe Munsey, RPL, SoCalGas <input type="checkbox"/> Randall Taylor, RPL, Taylor Land Service, Inc. <input type="checkbox"/>

¹Per Section 7(7)(a) prior to the regular meeting scheduled nearest to April 15th of each membership year, the membership will be provided with a list of the nominees for officers of Vice President, Secretary, Treasure and the two (2) Directors.

²Per 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.

³Per Article 8 (2) the outgoing President shall serve as Past President.

⁴Per Article 8 (2) the outgoing President shall serve as Director.

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Legislative Update



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



Federal Bills Report

Keep it in the Ground Act. On February 11, Rep. Jared Huffman (D-CA) introduced the Keep it in the Ground Act, which would prohibit the issuing of new leases for oil and gas production on federal lands. A bill number has now been assigned, H.R. 4535, and as of February 16, the measure was referred to the House Natural Resources Committee's Subcommittee on Energy and Mineral Resources. As previously, reported, given the Republican-controlled House and the bill's hostility to federal oil and gas resource development, reporting out of the committee for a floor vote is unlikely, but we will continue to monitor and report any movement. Read more.

H.R. 4583. On February 23, H.R. 4583, a bill that would require the U.S. Department of Energy to prioritize education and training for jobs in the energy and manufacturing sectors and create a clearinghouse for information and guidance related to workforce development, was introduced in the House. On February 29, the bill passed the full House chamber after being voted on favorably by the House Energy and Commerce Committee. The measure's purpose is to "promote a 21st century energy and manufacturing workforce." In part, the bill will enable the U.S. Secretary of Energy to "prioritize education and training" for energy-related jobs in the oil and gas industry. While not specifically identifying land professionals in the bill, the measure supports industry-wide education and training efforts.

Bill Introduced to Propose on Class II Injection Well Projects

California AB 1882, relating to groundwater monitoring, was introduced by Assembly Member Das Williams, (D-Santa Barbara), chair of the Assembly Natural Resources Committee. The bill is awaiting committee referral. It would allow the State Water Resources Control Board and regional water quality control boards to review, comment on, and propose additional requirements for Class II underground injection well projects starting January 1, 2017. The Oil, Gas, and Geothermal Division would not be able to approve a new project suggested by the review without written concurrence from the state or regional board that the injection of fluids would not affect the quality of water.

Bill Introduced Requiring Independent Study on Injection and Storage Practices

California AB 1905 was introduced by Assembly Member Scott Wilk, (R-Valencia), vice-chair of the Assembly Privacy and Consumer Protection Committee. The bill would require the Natural Resources Agency to complete an independent scientific study on natural gas injection and storage practices and facilities by July 1, 2017.

Federal Economic Relief for Small Producers Could be on the Way

Kansas Congresswoman Lynn Jenkins, is expected to introduce legislation to remove the net income limitation on percentage depletion for oil and natural gas produced from marginal properties. The net income limitation expired in 2013 and small producers have been calling for Congress to reinstate the program in order to protect jobs, strengthen America's energy security, and enhance the climate for small businesses in America.

Legislation That Will Change Definition of Idle Wells Introduced

A bill introduced by Assembly Members Das Williams (D-Santa Barbara) and Tony Thurmond (D-Richmond) will change the landscape of "active observation wells" and "idle wells." Specifically, AB 2729 expands or changes the definition of both and increases the amounts of the required blanket indemnity bonds.

AB 2729 also changes the data reporting requirements for an "active observations well" from every three years to every month. The bill also calls for abandoned underground personal property of an operator to become the property of the mineral interest owner but does not provide any rationale for this requirement.

Aliso Canyon Storage Leak Legislation Move Onto the Assembly

Senate Bill 380, by Senator Fran Pavley (D-Moorpark) is a proposed mandate to require new testing of all wells at the Aliso

*Legislative Update
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- Land use permitting and related environmental review

Legislative Update
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Canyon gas storage facility. The bill requires new testing of all wells at the Aliso Canyon gas storage field before operations can resume at the facility.

The Division of Oil Gas and Geothermal Resources (DOGGR) has released recommendations calling for extensive testing of all wells before operations restart. Whether the utility challenges the recommendations remains to be seen; SB 380 would also require the public to be included in the process going forward and require agreement between multiple regulatory agencies prior to any operations.

SB 380 passed off the Senate floor unanimously and will now be considered in the Assembly.

City of Los Angeles to Hire Petroleum Administrator

The Los Angeles City Council has instructed city staffers to immediately hire a petroleum administrator position on a full-time basis to oversee all oil and gas production activity in the city. The motion by Council President Herb Wesson passed unanimously. The position will require experience/credentials in oil & gas.

Message From LAAPL Chapter President RE: Adding the Rim of the Valley Corridor to the National Park System

LAAPL Members and Industry Friends,

A legislative bill will be introduced into congress this Spring to officially create the Rim of the Valley Corridor as a unit of America's National Park System. Two members of congress, Congressman Adam Schiff and Congresswoman Julia Brownley, plan to introduce this legislation. The congresspersons held two public meetings in the second week in March.

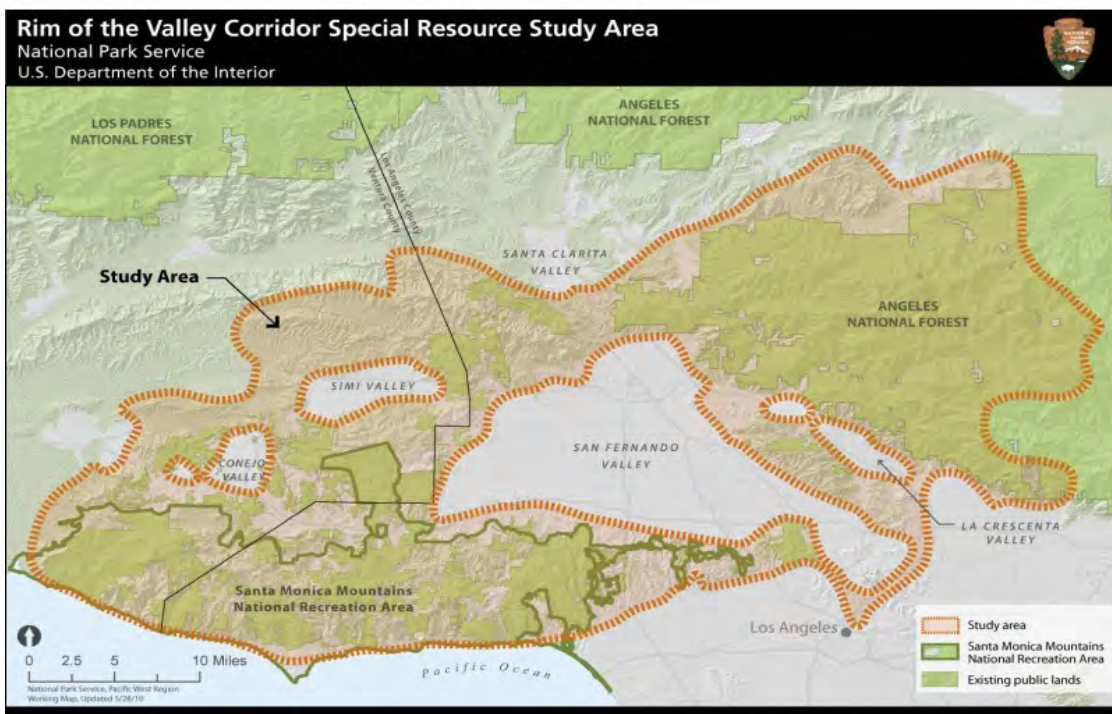
The Rim of the Valley Corridor would connect the inland San Gabriel Mountains and the Los Padres National Forest to the Simi Hills, Santa Susana Mountains and on into the coastal Santa Monica Mountains.

Now is the time to express your ideas and opinions regarding the proposed legislation that will give full protection of close to 300,000 acres in western Los Angeles county and eastern Ventura county to protect wildlife habitat, wildlife corridors and passive public recreation (hiking trails and nature centers) as well as protection for historical resources within the corridor boundaries.

You can still send email comments to:
schiffROTV@mail.house.gov and to your local representatives.

Thanks all. Your voice needs to be heard over the din of support for the closing off of more private access to lands once open for public and private use as proposed by The Rim of the Valley Corridor legislation.

Ernie Guadiana, Esq.
President, LAAPL



Luncheon Speaker
continued from page 1

gas fired power plants. Between 2007 and 2012, he served as the Vice President of Business Development, Asset Management and Operations for Third Planet Windpower where he was involved in the development, construction and operation of 3 wind projects comprising 190 megawatts in Texas and Nebraska. In addition he was responsible for the development of both solar and wind projects in New Mexico, Texas, and California.

Cliff completed his undergraduate studies at the University of Oklahoma earning his Bachelor of Business Administration in Petroleum Land Management. He and his wife Sue reside in Agoura Hills California.

**Scheduled LAAPL Luncheon
Topics and Dates**

March 17, 2016

Clifford E. Clement, Vice President,
MacPherson Oil Company

“Renewables – Land Work
Opportunities”

May 19, 2016

TBD

Officer Elections



**Randall Taylor, RPL
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**SUTTON VS. SM ENERGY CO. – PERPETUATING ORRIS BY
CONTINUOUS OPERATION CLAUSES**

By Manning Wolfe, Esq.

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Issue: SM Energy Company filed a declaratory judgment action in Texas seeking confirmation of a lower court decision that a 1966 oil and gas lease terminated with respect to approximately 18,000 acres; that appellants' ORRIs carved out of assignments of the lease were extinguished; and that SM was not obligated to pay appellants royalties based on their claimed ORRIs following execution of a new lease executed on the same 18,000 acres in 2010.

Background: 1. In 1966 Sutton Producing Corporation leased 40,000 acres from Briscoe Ranch. About 2 months later, Sutton assigned its interest in the 1966 lease to Kenoil, et al, but reserved for itself a 5.46875% ORRI. The assignment contained a savings provision that extended the ORRI to any new leases: ORRI...“is to apply to all amendments, extensions, renewals or new leases taken on all or a part of the lease premises within one year after termination of the present lease”.

2. In 1978, Kenoil assigned its leasehold interest to a third party, reserved an ORRI of 2.00%, and included a savings provision that extended the ORRI to any new leases.

3. Over the years, drilling and production operations continued under the 1966 lease, which was amended several times. In March 2000, Crimson Energy, a successor lessee under the 1966 lease and SM's predecessor, released about 22,000 of the original 40,000 acres under the 1966 lease back to Briscoe Ranch. Briscoe Ranch and Crimson also amended the 1966 lease as to the remaining 18,000 acres. The amendment required Crimson to complete certain tasks by December 31, 2000 and contained a continuous drilling provision that required Crimson to commence drilling operations within 120 days, or “this lease shall automatically terminate as to all of the lease premises...except the acreage included within each well tract...”

4. In 2007, the parties again amended the lease and included a continuous drilling provision, with similar language to that of the lease, which required in part that actual drilling occur within 120 days after completion of prior wells.

SM's Argument: In its motion for summary judgment, SM contended it completed the drilling of the Briscoe E 1272 well on the 18,000 acres on October 5, 2008. SM also contended that it stopped drilling wells under the 1966 lease after that completion. Under the continuous drilling provision SM was required to commence the actual drilling of an additional well within 120 days of completing the Briscoe E 1272 well (February 5, 2009).

In a filed affidavit, SM's landman, Mark Cody, attested SM asked Briscoe Ranch in late 2008 to allow the lease to remain in effect even if the continuous drilling requirement was not met. Briscoe Ranch refused, and no other wells were drilled on the land.

Cody also attested that in late 2009, SM drilled a successful Eagle Ford well on land not part of the 1966 lease. Based on this new find and improved market, SM contacted Briscoe Ranch about again leasing the 18,000 acres. On May 1, 2010, Briscoe Ranch and SM entered into a new lease for this land. SM did not commence drilling another well on the 18,000 acres until May 1, 2010, well past the 120 day continuous drilling deadline. SM asserted the 1966 lease terminated on February 5, 2009, and Sutton's ORRIs expired.

Sutton's Argument: Appellants expressly did not contest the termination of the 1966 lease or the existence of the 2010 lease. Instead, they contested SM's contention that the 1966 lease terminated on February 5, 2009. Sutton acknowledged both the 1966 lease and the 2007 amendment contained a continuous drilling provision. However, they contended the continuous drilling clause in the 2007 amendment did not state what happens when continuous drilling ceases. Therefore, “nothing happened” on February 5, 2009, and the 1966 lease remained in existence because “operations” continued under the habendum clause until the new lease was executed in 2010 - at which time the 1966 lease finally terminated.

Rationale: The Texas Appeals Court: “...Oil and gas leases generally...include a continuous drilling or continuous operations clause to prevent the lease from expiring at the end of the primary term while drilling operations are in progress. These clauses, in effect, make drilling operations the equivalent of production for purposes of the habendum clause.” A lessee should be aware of the type and level of activity required to maintain a lease, including operations, drilling and re-working operations, etc. Unless these terms are specifically defined in the lease, the court should strive to apply the generally

Case - O&G

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accepted industry meanings.

The court asserted that even if there was some ambiguity in the 2007 amendment as to the method of determining the size of the retained well tracts or depth, it does not mean “nothing happened”. They found no ambiguity in the continuous drilling clause contained in the amendment with regard to the circumstances under which the 1966 lease would terminate.

Harmonizing all the provisions together, the court concluded the unambiguous intent of the parties is that the 1966 lease (and amendments) would terminate unless the lessee commenced drilling an additional well within 120 days after completion of the previous well. When the lease terminated, all interests of parties to the lease terminated, including the ORRI’s.

Final Judgment: Because Appellants did not dispute that SM completed a well on October 5, 2008 and did not commence drilling another well on the 18,000 acres until May 1, 2010, the appellate court concluded the 1966 lease terminated on February 5, 2009. With no new lease being executed within twelve months of that date, appellants’ ORRIs expired. They agreed with the trial court’s granting SM’s motion for summary judgment.

Judgment affirmed.

Reference: Sutton v. SM Energy Co., 421 S.W.3d 153, 158 (Tex. App.—San Antonio 2013, no pet.

SIDE BOX:

In harmonizing all the clauses of the leases and amendments, the Appellate Court referenced the following cases:

Termination of an oil and gas lease is a contractual matter. See *Wagner & Brown, Ltd. v. Sheppard*, 282 S.W.3d 419, 424 (Tex.2008); *Tittizer v. Union Gas Corp.*, 171 S.W.3d 857, 860 (Tex.2005) (oil and gas lease is a contract and its terms are interpreted as such). In construing an unambiguous oil and gas lease, we seek to enforce the parties’ intent as expressed within the four corners of the lease document. *Tittizer*, 171 S.W.3d at 860; *Anadarko Petroleum Corp. v. Thompson*, 94 S.W.3d 550, 554 (Tex.2002). We construe the lease as a whole, attempting to harmonize all its parts, and attribute to the lease’s language its plain, grammatical meaning unless it would undermine the parties’ intent. *Anadarko*, 94 S.W.3d at 554; see also *City of Keller v. Wilson*, 168 S.W.3d 802, 811 (Tex.2005) ...We construe lease and its amendments as a whole if amendments pertain to same transaction.

Ms. Manning can be reached at manning@manningwolfe.com



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Case of the Month - Right of Way

WHAT THE GOVERNMENT GIVETH – THE GOVERNMENT MAY TAKETH AWAY; – BUT SOMETIMES THE GOVERNMENT MAY HAVE INVERSE CONDEMNATION LIABILITY FOR DOING SO.



Or, How the State Got Stuck Paying Inverse Condemnation Compensation When It Implemented a Plan Peeling Back Flood Protection to Private Property in Order to Protect Ecological Resources.

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

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RE: Pacific Shores Property Owners Assn. v. Department of Fish & Wildlife, (2016) 244 Cal. App. 4th 12.

It is established law in California that public entities may be held liable in inverse condemnation when they build and operate flood control projects that fail, if it can be shown that the project posed an unreasonable risk of harm to private property, and that unreasonable risk was a substantial cause of actual damage to the private property. *Belair v Riverside County Flood Control Dist.* (1988) 47 Cal. 3d 550, 565. *Pacific Shores* extended this doctrine to situations where the public entity had built no flood control project, but has instead failed to undertake measures to reduce flooding that historically had been taken. Moreover, *Pacific Shores* held that a public entity may be held strictly liable, without proof of unreasonableness, if the failure to undertake measures was a result of an intentional plan which was adopted to accomplish non-flood protection objectives, in this case protection of sensitive ecological resources.

In *Pacific Shores*, the Court of Appeal upheld a trial court ruling that the State Department of Fish & Wildlife was liable in inverse condemnation for adopting and implementing a plan to reduce the historic flood protection the government had provided to an area of vacant residentially zoned properties. As a result of the reduced flood protection, the residential properties were flooded during certain times of the year.

The residential properties were adjacent to a large coastal lagoon that was separated from the ocean by a sandbar. Historically the County breached the sandbar to cause the lagoon waters to flow into the ocean when the water level in the lagoon rose above 4 feet mean sea level (msl). If the sandbar were not breached, the lagoon water level would ultimately spill over and flood adjacent lands. Cutting the breach required approval of regulatory agencies; which agencies varied over time and included the Army Corps of Engineers and later the State Coastal Commission.

In the early 1960's the County approved the residential subdivision along the lagoon's shore and lots were sold to buyers who relied upon the historical flood protection provided by the breaching of the sandbar at the 4 foot msl level. For various reasons, homes were never built on the lots. Ultimately the State Department of Fish & Wildlife acquired ownership of the lagoon, and the Coastal Commission gained regulatory authority over the lagoon area and the residential area, resulting in the need for Coastal Commission approval for grading, construction or development activities, including breaching of the sandbar. Through 1987 the County had obtained Coastal Commission approval to breach the sandbar when water levels in the lagoon rose above 4 msl, but after 1987, until 2005, the Coastal Commission declined to issue long term permits for the breaching of the sandbar and only acted upon emergency requests of the County or of the Department of Fish & Wildlife. The reason for the hiatus was the need for the preparation of environmental studies to determine what water levels were necessary within the lagoon during various seasons in order to protect sensitive species and environmental resources. During at least the 16 year period before 2005, emergency permits for breaching the sandbar were issued by the Coastal Commission only when the lagoon's water level rose above 8 feet and began flooding properties and roads within the residential subdivision.

In 2005 the Department of Fish & Wildlife approved a management plan that called for the sandbar to be breached when water levels in the lagoon rose between 8 to 10 feet. In the process of preparing and adopting this plan, the Department processed an EIR which also examined alternatives of breaching the sandbar at 4 msl and the alternative of never artificially breaching the sandbar (it breached naturally after even higher water levels were reached). Permits were thereafter issued by the Coastal Commission which only allowed the Department to breach the sandbar at the 8 to 10 foot msl. In 2007, the owners of residential lots adjacent to the lagoon sued both the Coastal Commission and the Department of Fish & Wildlife for inverse condemnation when the waters rose in the lagoon past 8 feet msl, flooding their properties.

The Department argued that it had no obligation to provide any flood protection to the residential areas, so it should not be liable for inverse condemnation when it reduced the flood protection (by allowing waters in the lagoon to rise

*Case - R/W
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to higher levels before it breached the sandbar). The appellate court rejected this argument, indicating that by reducing historic levels of flood protection that were reasonably relied upon by private property owners, and doing so for purposes unrelated to flood control (in this case to protect ecological resources), the state had made an intentional decision to take the private property for public use. Having done so, the State is liable for inverse condemnation and must compensate the private property owners for the flooding easement.

The Court held that the Coastal Commission was not liable for inverse condemnation because the property owners had not exhausted their administrative remedies, specifically, had not challenged the Commission's decision to issue permits to breach the sandbar only when the water levels rose between the 8 to 10 foot msl. State law requires such rulings to be challenged within 60 days of the decision or they would be barred by the Statute of Limitations (Pub. Resources Code § 30801). The means of challenge would be by filing with the courts a writ of mandamus petition seeking to reverse the Coastal Commission action (which writ petition could be combined with an inverse condemnation lawsuit). Since the property owners waited until 2007 to challenge the 2005 Coastal Commission permit decision, their lawsuit was time barred against the Coastal Commission.

The 60 day challenge period, however, did not apply to an inverse action against the Department of Fish & Wildlife. The difference is that the action against the Coastal Commission was one for a regulatory taking, i.e., a taking by adoption of a regulation that impacted the use of property. The Court held that the Commission had not physically invaded or damaged the plaintiffs' properties but had only regulated the use of the properties. On the other hand, the Department of Fish & Wildlife had effectively physically appropriated plaintiffs' properties when it adopted and implemented a plan to enhance the protection of ecological resources by allowing the water levels to rise between the 8 to 10 foot msl.

The statute of limitations in California for physical appropriation or damaging of real property is three years. The Department argued that this three year statute of limitations had passed because flooding of the plaintiffs' properties had occurred intermittently between 1987 and 2005 when breaches of the sandbar were done only by emergency permit and such permits were issued only when the lagoon's water level rose above 8 feet and began flooding properties and roads within the residential subdivision. The Court rejected that argument and ruled that the statute of limitations does not begin to run in such cases (particularly in cases of flooding claims) until the "situation has stabilized" – "until the consequences of the inundation have so manifested themselves that a final account may be struck". The reasoning is that a plaintiff does not know the degree or quantity of damages until there has been a stabilization of events. Such stabilization was held to occur here in 2005 when the Department adopted and implemented its plan. Before then, the plaintiffs had no way of knowing what water levels would be allowed in the lagoon from time to time. Since the plaintiffs sued within 3 years of 2005, their inverse condemnation suit was not barred by the 3 year statute of limitations.

A side issue was the plaintiffs' attorneys' fees claim. A successful plaintiff in an inverse condemnation lawsuit is entitled under Code of Civil Procedure § 1036 to recover reasonable costs including reasonable attorneys' fees "actually incurred". The plaintiffs had a contingent fee agreement with their attorneys that provided the attorneys would be paid at a rate of \$225/hour and the amount the Attorney will receive will be the greater of [1] those fees awarded by the court in a final judgment, or [2] forty percent of the recovery if any recovery is obtained after trial. The damages awarded to plaintiffs for the inverse condemnation amounted to \$114,500 and the trial court awarded plaintiffs approximately \$45,000 in attorneys' fees (approximately 40% of the \$114,500). Plaintiffs claimed that they should receive \$550,000 for attorneys' fees based upon the hours worked times the \$225/hour rate. The appellate court rejected plaintiffs' arguments holding that the statutory restriction to attorneys' fees "actually incurred" did not permit an award based upon hours worked times hourly rates, because plaintiffs' fee agreement did not require plaintiffs' to pay that sum.

Lessons Learned and Practical Recommendations:

A key lesson to property owners is to be aware of the need to file a petition for writ of mandamus to challenge a governmental land use regulation within a very short period (in this case, 60 days) or risk being barred from pursuing a challenge to that regulation or from claiming that the regulation has resulted in the inverse condemnation of your property.

A key lesson to public entities is that they risk inverse condemnation liability when they reduce historic protections the government provided to private properties when the reduced protection gives rise to physical invasion or physical damage to the private properties. This may be the case even when the public entity had no duty to provide the protections in the first place. This is particularly important to keep in mind during days of fiscal constraints when public entities must make decisions about levels of service to provide.

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Case - R/W
continued from page 18

A key lesson to attorneys is to be aware of the limitations on recovery of attorneys' fees in inverse condemnation actions under Code of Civil Procedure § 1036 to those "actually incurred" and to word your contractual fee provisions in contingent fee agreements with that restriction in mind. Attorneys had put in \$550,000 of time and effort at their normal rates of \$225/hour, but collected only \$45,000 despite being successful in a difficult, hard fought case.

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Mickelson Golf Classic Coming Soon

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Mickelson Golf Classic Chair
213-225-0347, Jason.downs@breitburn.com

Jason Downs, RPL, LAAPL Golf Chair, cordially invites you to participate in the 2016 LAAPL Mickelson Golf Classic fundraiser to be held again @ Angeles National Golf Club in Sunland California on Friday, September 16th, 2016. LAAPL will donate the net proceeds realized from the tournament to the R.M. Pyles Boys Camp, thus we encourage you to "sponsor" generously. Please return your checks with completed sponsorship forms and logos as soon as possible and no later than September 1, 2016, as only 72 golf reservations are available. Cocktail hour, buffet dinner, lunch, raffle and awards ceremony will follow. We look forward to your participation.

2016 challenge, we want to increase the participants this year and are aiming to fill every golfer spot with sponsorship. Get your check books out for the Pyles Boys Camp!!

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General Credit Courses:

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[#101](#) Due Diligence for Oil and Gas Properties
Credits approved: 10 CPL/RPL/RL
\$75.00

[#102](#) The Outer Continental Shelf
Credits approved: 5 CPL/RPL/RL
\$37.50

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

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

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

[#108](#) Water Quality Issues: Safe Drinking Water Act (SDWA)/Clean Water Act (CWA)/Oil Pollution Act (OPA)
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\$30.00

[#109](#) Common Law Environmental Issues and Liability for Unplugged Wells
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Ethics Credit Courses: Two ethics courses are available. Each course contains two essay questions. You may complete one or both of the questions per course depending on your ethics credits needs. Each question answered is worth one ethics continuing education credit.

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

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



Seminar 1

Due Diligence - Overview

8:00 am - 11:30 am

A moderated roundtable style discussion launches this year's AAPL Due Diligence Seminar. Stakeholders from throughout the industry come together and discuss the acquisition process from their own unique viewpoints. A series of introductory lectures providing a broad overview of the due diligence process follow and lead into the afternoon's slate of advanced topic lectures and dis

Panel

Nicole Maxwell, CPL
Vincent A. Caruso Jr., RPL
Sean M. McGovern
Don Hueske
A. Frank Klam, CPL

Seminar Day Luncheon

11:45 am - 1:15 pm

"Making Your Message Memorable: Networking in Challenging Times"

Anthony Huey

Whether you realize it or not, your communication skills, even when you're networking, are constantly being judged by others, often subconsciously. How you communicate in everything from casual conversations to formal presentations can be the difference between success and failure. This highly interactive, hands-on session teaches effective ways to communicate your message to a wide variety of audiences you deal with every day, including networking contacts, customers, prospects, boards of directors, management, community partners, elected officials, investors, and many others.

Seminar 2

Due Diligence - Advanced

1:15 pm - 4:45 pm

Covering Due Diligence in Land, the afternoon session is more advanced in nature



and gets granular into the nuances of due diligence projects for producing properties. Some of the topics presented by this experienced panel of subject matter experts are Consent to Assign (risks/responsibilities involved), Pref Rights (fraud/ethical violations). Operatorship (business focus, provisions in various agreements) and Election of Operators, to name a few focus areas.

Panel

Linda F. Ensley
Timothy M. Spear
Shane A. Hanson
Lori A. McMullen

Thursday, June 16, 2016

Education Sessions

Education Kick-Off Luncheon

12:00 pm - 1:00 pm

"The Moral Case for Fossil Fuels"

Alex Epstein, Author of *New York Times* Best-Seller *The Moral Case for Fossil Fuels*

In his best-selling book *The Moral Case for Fossil Fuels*, Alex Epstein argues that fossil fuels, despite popular perception, have improved every measure of human well-being, from life expectancy to clean water. Believing that the public only hears one side of the story, he discusses how we are programmed to only concentrate on the risks and side effects of fossil fuels rather than their unique ability to provide cheap, reliable energy to a world of 7 billion people - most of whom are in developing countries and have no access to alternatives.

Advanced - Session 1

1:00 pm - 2:00 pm

"Perspectives of the Mineral Owner and Landman"

Paul Simpson

Mark A. Acree, CPL

Do you wonder why the landowners ask for what they do when negotiating a lease or other agreement? Are they just being unreasonable, or could there be a valid reason for a particular clause or definition? This is your chance to obtain insider's information from a mineral owner's perspective. Join us for a lively conversation between a mineral owner's representative and a landman as to what they're thinking when negotiating an oil and gas lease or other agreement involving surface and mineral rights.

General - Session 1

1:00 pm - 2:00 pm

"Oilfield Economics: Understanding Expenses and Revenue"

Zack Arnold

Investigating basic oil and gas well economics, this presentation analyzes expenditure and revenue throughout each step of the drilling process. The expenditures are broken down into specific categories highlighting the costs and operations of hydraulic fracturing, drilling and producing the well. The presentation works to demonstrate actual revenue by evaluating market pricing, basin level adjustments and operating expenses.

Advanced - Session 2

2:00 pm- 3:00 pm

"Petroleum Geology"

Aaron Adams, PhD

Today's fast-paced business world demands continuous communication about the drivers that make the oil and gas industry tick. Common petroleum geology themes that can influence land acquisitions/divestments and budget include prospect risking, identifying hydrocarbon potential and play mapping. Take home a few key technical conversations that will enrich team discussions and help define the value of your mineral acreage.

General - Session 2

2:00 pm - 3:00 pm

"Regulatory Permitting - Natural Gas Infrastructure"

Kenneth Tawney

This presentation will provide an overview of government regulation of the midstream segment and current issues that relate to landmen.

Advanced - Session 3

3:00 pm- 4:30 pm

"The AAPL 2015 JOA; So, What's New?"

Fred M. MacDonald

Dorsey T. Roach, CPL

This presentation identifies and explains the reasoning and changes behind what has now been named the AAPL 2015 JOA. Issues involving changes in ownership, failure of title and leases containing Pugh Clauses are addressed in the new 2015 JOA as are matters involving the operator, nonconsenting parties and the use of emails for sending formal proposals and making elections.

General - Session 3

3:00 pm - 4:30 pm

"Global Perspective on LNG"

Susan L. Sakmar

This presentation addresses the role of LNG in the global energy supply mix in the context of a number of often conflicting policy goals related to economic growth, energy security, climate change and environmental sustainability. Of particular focus is the increase in LNG trade to recent years, which has led many to question whether the gas markets are "globalizing." While LNG is not expected to become a global commodity any time soon due to the lack of a single pricing structure, there is growing recognition that LNG is the "glue" linking global gas markets. The critical role of LNG will intensify as the United States begins to export LNG and as more and more countries turn to LNG to meet growing demand for cleaner burning fuels.

Advanced - Session 4

4:30 pm - 5:30 pm

"Principled Leadership: A Road from Good to Great"

Joan Vestrand

Focusing on principled life and leadership and its benefits, this program addresses why ethics matter to both personal and professional success as well as details the behavioral science behind ethical decision making. It explores the human brain, including the pull of our subconscious and its powerful influence on our choices and decisions. Best strategies for avoiding the slippery slope of self-destruction are identified and encouraged for production of the moral muscle memory necessary to overcome our own oftentimes nefarious influence. The importance of personal integrity in leadership, and in best life, is demonstrated, as are the benefits of positive attitude and optimism in our ability to lead and achieve.

General - Session 4

4:30 pm - 5:30 pm

"The General Mining Law"

Joshua B. Cook

A presentation on the history of mining in the West and summary of the General Mining Law as it exists today. This presentation gives an overview of the rights and nuances associated with unpatented and patented mining claims, how claims are located, the types of claims available, federal requirements and variations in state law requirements.

Friday, June 17, 2016
Education Sessions

Advanced - Session 1

8:00 am - 9:30 am

"Acquisitions & Divestitures Strategies"

Mark A. Acree, CPL

Kevin M. Gormly

This course will outline strategies relating to A&D activities, searching for opportunities in the market, documenting a deal, and methodologies to close a transaction. Topics will include the structure of an agreement, the roles and responsibilities of the parties, and execution from due diligence to closing (and post-closing events). The course will also touch upon the challenges of A&D in the current climate and review recent transactions in the industry.

General - Session 1

8:00 am - 9:30 am

"US LNG Exports: Opportunities and Challenges"

Susan L. Sakmar

In recent years, the prospect of US LNG exports has captivated global gas markets. With the first US LNG exports expected in 2016, this presentation discusses the role of US LNG exports in the context of global gas markets and identifies the opportunities and challenges for US LNG exports going forward.

Advanced - Session 2

10:00 am - 11:30 am

"Offshore Leasing and Development - The Changing Landscape"

J. Keith Couvillion, CPL

This presentation will review the current oil and gas leasing procedures used for federal offshore submerged lands and the new 2017-2022 Five Year Leasing Program currently under consideration by the Department of Interior. This presentation will also review certain new and proposed changes to the existing regulations that will impact the drilling and development of offshore energy resources and will look at some of the new technologies being development to more efficiently extract hydrocarbons from outer continental shelf properties.

General - Session 2

10:00 am - 11:30 am

"Negotiating the Oil and Gas Lease"

Roger A. Soape, CPL

Negotiating the oil and gas lease is almost always an unique event. Still, the individual events all have many common elements. Leasing properties in Texas, for example, will share many principles with leasing in every other state. The presentation will concentrate on the common elements of negotiating the oil and gas lease. As we will see, some of those common elements can be influenced by the parties' uncommon actions and circumstances.

Advanced - Session 3

1:30 pm - 3:00 pm

"Joint Operations in Down Economic Times: Practical Application of the New 2015 JOA"

Fred M. MacDonald

Dorsey T. Roach, CPL

Given the current market conditions in this industry downturn, it's important to consider the various nuisances of how joint operations play out in challenging market conditions and this advanced session will highlight the practical application of the new 2015 Form to take into account bankruptcies, enforcing/litigating the agreement in such a market, and in general joint operations and the implications on the Joint Operating Agreement when parties are financially distressed.

General - Session 3

1:30 pm - 3:00 pm

"Business Etiquette - A Focus on Social Media"

Deborah King

Technology has blurred the lines between our personal and professional lives. It is not uncommon to answer work-related calls, check emails and texts after hours. Knowing how to communicate effectively face-to-face, on the phone, through an email, text and on social media is essential. Learn key points to consider before you hit the send button.

Advanced - Session 4

3:30 - 5:00 pm

"Landwork/Technology - Then and Now"

William "Bill" Justice, CPL

This presentation will discuss the ways in which all facets of landwork are affected by technology, with a particular emphasis on reflecting on how work was performed prior to the widespread acceptance of various new technologies.

General - Session 4

3:30 pm - 5:00 pm

"Principled Leadership: A Road from Good to Great"

Joan Vestrand

This presentation addresses why ethics matter to both personal and professional success and details the behavioral science behind ethical decision-making. The human brain is explored including the pull of our subconscious and its powerful influence on our choices and decisions. It is a program designed to help us each achieve best life personally and professionally, to be a superior leader, and to avoid falling victim to ourselves.

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