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Volume X, Issue IV | September, 2016

LAAPL
Los Angeles Association of Professional Landmen

Presidents Message

John R. Billeaud
President
Freeport McMoRan Oil & Gas

Dear LAAPL members and friends, we hope you all had a nice summer and Labor Day weekend. Being from South Louisiana, I still have not gotten used to the idea that wildfires are more common than rainfall in this great state of California. In fact, in a recent article in a Baton Rouge newsletter about the catastrophic flooding revealed there had been more rainfall in a two week period than Bakersfield has totaled over the past 5 years!...but enough about the weather.

I am honored to be your President for the 2016-2017 term and very much looking forward to serving with our talented Executive Board and Committee Chairs on continuing LAAPL's great tradition. A big "thank you" to Ernest Guadiana, Esq., for serving as President last term. Ernest did an impressive job at running the organization and I look forward to serve with him again this year in his capacity as Past President. I would also like to thank those who have volunteered their valuable time to serve on the Executive Board and as Committee Chairs – a special thanks goes out to Sarah Downs, J.D., RPL, for all of her hard work and dedication serving as Treasurer since 2010. We wish her the best of luck in her endeavors.

As I am writing our first President's message, WTI is at $46/bbl and Brent is at $48/bbl, where it appears to be hovering indefinitely. The majority of the industry experts were right when they said this would not be a rapid recovery like 2008-2009. However, many are using the down time to seize opportunities not afforded to them when prices are high and everything is guns

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Inside This Issue:

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Meeting Luncheon Speaker

"Natural Resource Surface Use Conflicts: The View from the Trenches"

Michael McQueen, Esq., of the Law Offices of Michael McQueen, has practiced as a natural resource attorney for 35 years. For ten years he held the position as division counsel for Unocal Geothermal Division and alternative energy projects. He is a qualified expert in flooding litigation, experienced with alternative energy, mining and related complex litigation; and has been a court appointed mediator for oil and gas production disputes. Mike completed his undergraduate studies at California Lutheran College earning his Bachelor of Science, Geology. He completed his graduate studies at Southwestern School of Law, earning his Juris Doctorate.

Opinionated Corner

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

Well, another year at the helm of LAAPL's award winning newsletter, with my Co-chair, Randall Taylor, RPL, of Taylor Land Services. While we were vexing ourselves into a frenzy pondering if our current Chapter President, John "JR" Billeaud of Freeport-McMoRan Oil & Gas, would offer us the Co-chair again, we are sure Randy took no thought he would be asked to hang up the chaps.

While it is not beneath our character to bow the knee and kiss the ring to keep our grips on the wheel here, as we stated in our last column, we will not lay prostrate before anyone to maintain the Co-chair of the Newsletter/Publication Committee. We do need to maintain some sense of decorum.

Although we could consume barrels of ink, petroleum based ink and not the soybean version, on government rules and regulation; and we all know the heavy cost of doing oil business in this state, there is a silver lining to government bureaucracy.

Who better to quote than Eugene McCarthy, who in his day was considered a liberal, howbeit in today's political environment he would be looked upon as a moderate, "The only thing that saves us from bureaucracy is its inefficiency. An efficient bureaucracy is the greatest threat to freedom."

Think about that for moment as you make your plans to head over to the Long Beach Petroleum Club for our first meeting of the 2016-2017 term.

Elsewhere on the horizon is the West Coast Landman's Institute in Bakersfield at the end of the month and we hope to see you there.

Presidents Message
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blazing. Worry not, the industry as a whole will come back even stronger as it always does and there is much to look forward to. I am anxious to see where oil prices will be when I sit down to write my final President's message in May next year.

I hope to see all of you at the Mickelson Golf Classic being held on Friday, September 16th at Angeles National Golf Course in Sunland. We held a successful event there last year and it is a terrific golf course designed by Jack Nicklaus, no less. Don't miss out!

Regards,

John R. Billeaud, President

LAAPL 2016 - 2017 Officers

Office

President

John R. Billeaud, Landman, Freeport-McMoRan Oil and Gas

Past President

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

Secretary

TBD*

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Suzy Husner, Independent

Director

Joseph D. Munsey, RPL, Senior Land Advisor, Southern California Gas Company

Director

Randal Taylor, RPL, President, Taylor Land Services, Inc.

**Cliff Moore resigned from his position due to retirement. Pursuant to Article VII (5) "In the event of the death, disability, transfer, incapacity or unwillingness to serve of any office or director, the membership, upon motion made by any other officer, may declare such office vacated and elect a new officer to serve the unexpired term."*

Lawyers' Joke of the Month

Jack Quirk, Esq.
Bright and Brown

A man goes to his dentist complaining about a severe toothache. After examination the Dentist said there is no other option but to pull the tooth immediately. The Dentist pulled out a large syringe and prepared to administer a shot. The man gasped, "No needles! I am afraid of shots. There must be another option." The Dentist put down the syringe and said, "No problem, a little nitrous oxide, will suffice," as he grabbed a mask and began to place it over the man's face. The man screamed--- "No masks! I'm claustrophobic. There must be another option."

The Dentist put down the mask and asked the man "How are you with pills?" The man replied, "Pills are not a problem," and the Dentist handed him two blue pills and a cup of water. After swallowing the pills the man asked, "What were those?" The Dentist replied, "Viagra, and here's my bill in advance. "Viagra?" the man responded. "I didn't know Viagra was a pain medication." "It's not," the Dentist replied. "But between my bill and the Viagra you should be plenty distracted for a while."

Treasurer's Report

Suzy Husner
Treasurer
Independent

As of 4/1/2009, the LAAPL account showed a balance of

Deposits

Total Checks, Withdrawals, Transfers

Balance as of 9/10/2016

Merrill Lynch Money Account shows a total

2015—2016 Officers & Board of Directors

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Randall Taylor, RPL, Co-Chair

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Education Chair
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Legislative Affairs Chair
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Nominations Chair
L. Rae Connet, Esq.
PetroLand Services
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Golf Chairs
Jason Downs, RPL
Chip Hoover
Leah Hoover

Chapter Board Meetings

With the resigning Cliff Moore, Independent, due to retirement and his contemplated move "back home," our board meetings minutes will not be published this month.

We wish Cliff well and appreciate his many years as Chapter Secretary and member of LAAPL. Cliff exemplified himself as a professional landman and was an ambassador to the public for LAAPL and the oil and gas industry.

A Special Election pursuant to Article VII (5) to replace Cliff will take place at our September 2016 meeting at the Long Beach Petroleum Club.

The LAAPL Board of Directors and Committee Chairs normally hold its Board Meetings immediately following the meeting in the same venue as the luncheon. We encourage our members to attend the meetings to see your Board of Directors and Committee Chairs in action.

Our Honorable Guests

May's luncheon was another successful LAAPL Chapter luncheon meeting held at the Long Beach Petroleum Club. Our guests of honor who attended:

Brandi Decker, California Resources Corporation

Stan White, G3 Soil Works

Mark Jenkins, Real Estate Broker

Scheduled LAAPL Luncheon Topics and Dates

September 15, 2016

Michael McQueen, Esq.
Law Offices of Michael McQueen
"Natural Resource Surface Use Conflicts: The View from the Trenches"

November 17, 2016
TBD

January 26, 2017
[4TH Thursday]
Annual Joint Meeting with
Los Angeles Basin Geological Society

March 16, 2017
TBD

May 18, 2017
TBD
Officer Elections

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 Member Requests

Brandi Decker
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Brandi.Decker@crc.com

Transfers

None to Report

Corrections

None to Report

2016 West Coast Landmens Institute

With the current state of the industry affecting all oil patches from coast to coast; the WCLI Board settled on a two day format to be held at Aera Energy LLC's auditorium in Bakersfield, CA as a way to reduce cost for all WCLI participants and sponsors. We look forward to seeing all professional landmen who are able to attend this annual educational seminar.

California Supreme Court Upholds Right of Entry Statutes, but "Reforms" them to Comply with Constitution

Bradford B. Kuhn, Esq., Partner &
Rick E. Rayl, Esq., Partner
Law Firm of Nossaman LLP

When public agencies analyze a potential public project, they often need to gain access to private property for surveys, testing, and to otherwise investigate whether a particular property is suitable for a planned project. Often, agencies gain access by talking with the property's owner and reaching agreement on a right of entry. But where the owner refuses to allow access, the agency must resort to the courts.

For decades, agencies have followed a set of rules that allow them to obtain a court-ordered right of entry with minimal notice and without most of the formality of a full-blown eminent domain action. But some owners have complained that allowing the government unwelcomed access to their private property constitutes a taking, regardless of the agency's effort to describe its conduct as a mere "right of entry."

The Supreme Court's recent decision in Property Reserve v. Superior Court holds that even if these types of surveys, testing and investigations qualify as takings (an issue the Court did not decide), and even if they therefore require compliance with all constitutionally-mandated protections for owners, the existing right of entry statutes are close enough to meeting those requirements that a simple, Court-imposed reformation of them solves any potential problem. The Court therefore held that the existing statutes are valid, but only if they are "reformed" to include a right to a jury trial on compensation (the one key constitutional protection the Court found lacking).

The end result is that agencies can largely continue with "business as usual" on their right of entry efforts, and courts will provide any owner who wants one an opportunity for a jury trial on the amount the agency must pay for that right of entry. This represents a huge victory for public agencies, which faced massive project delays and costs if all rights of entry were relegated to a formal eminent domain action.

The Property Reserve Back Story

In Property Reserve, the California Department of Water Resources was investigating the potential Sacramento-San Joaquin Delta twin tunnels project. As part of that work, the Department sought access to more than 150 properties to determine their suitability for the project. While the types of investigations the Department sought to conduct varied, for simplification, they sorted into two larger categories: (1) environmental testing and surveys; and (2) geological studies.

California's right of entry statutes provide that a public agency may enter upon property "to make photographs, studies, surveys, examinations, tests, soundings, borings, samplings, or appraisals or to engage in similar activities reasonably related to acquisition or use of the property for that use." (Code Civ. Proc., § 1245.010.) In order to secure such entry, the agency must obtain the owner's consent or obtain an order from the court. If the agency is required to petition the court for approval, the court may determine (i) the nature and scope of the activities reasonably necessary, and (ii) the amount the agency must deposit as the probable amount of compensation for the entry. If the agency causes damage or substantial interference with possession and use of the property, the owner may recover for such damage in a civil action or by application to the court.

Pursuant to that statutory scheme, and as part of the Department's efforts to analyze the project's environmental impacts in compliance with the California Environmental Quality Act ("CEQA"), the Department filed petitions to enter the properties and undertake both the environmental studies and the geologic testing to determine the suitability of each property for the project. Several of the owners opposed the Department's efforts, claiming that the proposed rights of entry constituted an unlawful taking of their property.

The trial court permitted some investigations but not others. In particular, the trial court allowed the environmental studies to proceed, but concluded that the requested geologic testing (which involved drilling and re-filling deep holes) qualified as a taking, and therefore required a formal condemnation action.

Case - R/W
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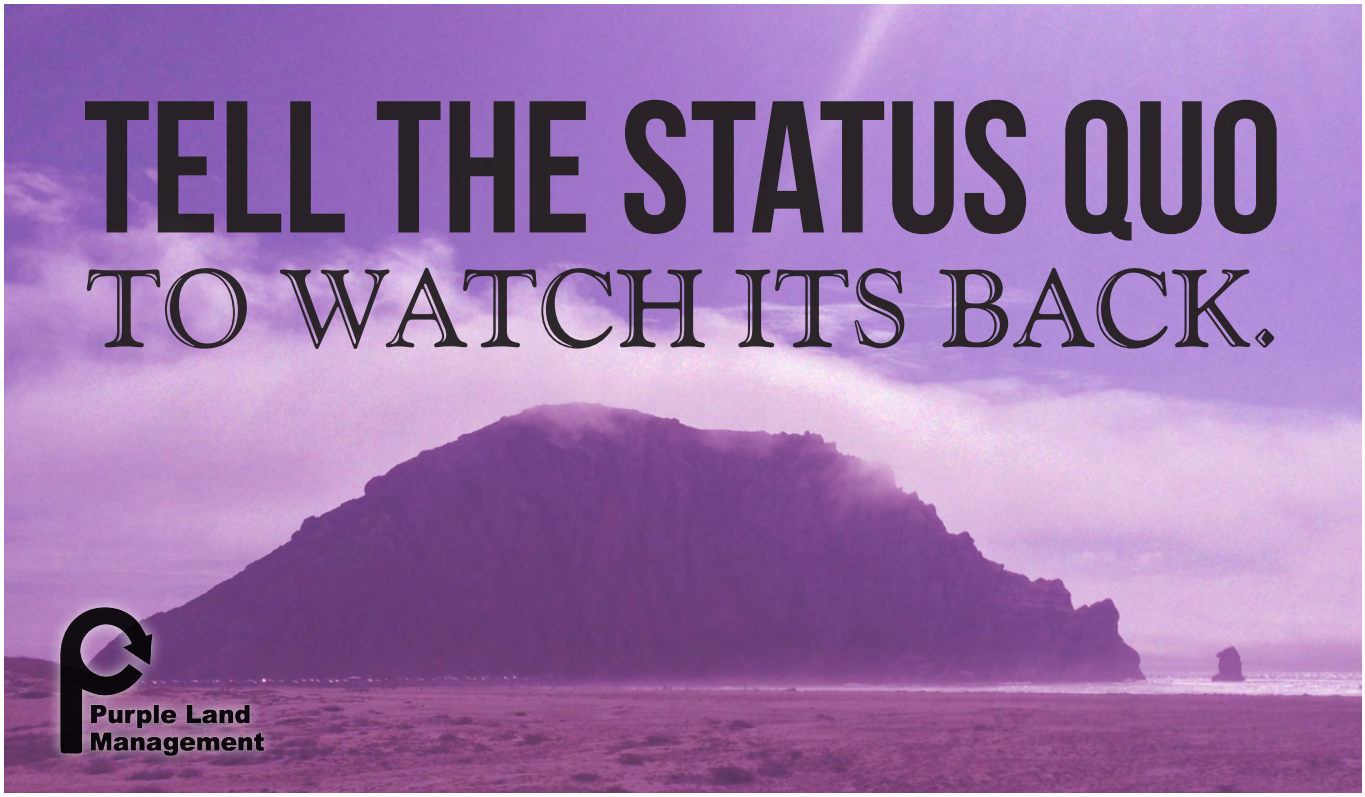

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Neither party was satisfied with the trial court's decision, and both appealed. On appeal, the Court of Appeal restricted the proposed precondemnation testing even further, holding that nearly all precondemnation rights of entry constitute a taking and require a constitutionally-appropriate condemnation action. The Court of Appeal also found that California's right of entry statutes do not meet that standard because, in particular, they do not provide the owner with the right to a jury trial – a specific protection provided to condemnees under the California Constitution.

The Department filed a Petition for Review with the California Supreme Court, which granted the Petition.

The Supreme Court Decision

The Supreme Court opinion starts by concluding that the right of entry process and its broad scope of allowed activities covers the testing and investigations the Department proposed to undertake. The Court explained that the Legislature established the right of entry statutes to provide a mechanism to meet the unquestioned need for precondemnation entry and testing while avoiding the ill-advised and premature condemnation of private property. The question, then, became whether the right of entry procedures pass constitutional muster.

The first question in this analysis was whether the right of entry activities qualified as a taking, requiring the constitutional protections afforded to condemnees. Interestingly, the Court chose to avoid that issue, concluding that as long as the right of entry statutes meet minimum constitutional requirements, there is no need to decide whether the Department's proposed activities rose to the level of a taking.

The Court thus moved to the second question: did the right of entry statutes meet minimum constitutional thresholds? The Court explained that the right of entry procedure requires (i) the institution of a legal proceeding, (ii) a limitation on the entry to only those activities reasonably necessary to accomplish the investigation, (iii) a deposit into court the probable amount of compensation, and (iv) a process to obtain additional compensation for any losses. The Court concluded that the right of entry statutes' only substantive shortcoming was the fact that they provided no right to a jury trial on the amount of compensation, a constitutional requirement.

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In a somewhat surprising twist, the Court did not strike down the statues because they fail to provide for a jury trial (the typical holding when the Court finds a statute to be unconstitutional). Instead, the Court elected to "reform" the right of entry statutes. The Court explained that in light of the real need for public agencies to have a simplified means to access properties during their environmental testing, the appropriate remedy "is to reform the precondemnation entry statutes so as to afford the property owner the option of obtaining a jury trial on damages . . . ." In other words, the Supreme Court simply re-wrote the law, correcting the constitutional shortcoming.

Conclusion

The decision is a significant victory for public agencies. Rights of entry are a necessary component to keep public projects on schedule while still complying with the maze of environmental laws that govern their approval. If the Court had elected to strike down the law as unconstitutional, agencies would have had no choice but to resort to a formal condemnation action just to gain access to a property for environmental testing – a process which takes nearly a year just to gain possession – and which would have added additional complications for projects with federal funding, since federal law typically requires that the environmental process be complete before the agency begins condemning property.

The decision also protects property owners, ensuring that they are afforded the basic constitutional protections of a formal eminent domain action even where the agency only seeks a right of entry.

While the decision to "reform" the statutes may be a bit unusual, and while it may create some initial confusion in terms of how the lower courts should implement this "reform," all in all the Court showed real sensitivity towards finding a solution that both protected basic constitutional rights while not wreaking havoc on the already complicated process of seeking environmental approval for a proposed public project

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

Mr. Rayl can be reached at rrayl@nossaman.com.

Legislative Update

Mike Flores
Luna & Glushon

CIPA Reports on the End of the Legislative Session

The 2015-16 legislative session ended last week with a host of legislation being debated, defeated or sent to the Governor's desk. CIPA engaged heavily on major climate change measures, stood with our industry allies, and the results were mixed. One of the most hotly-contested proposals, SB 32 by termed-out Southern California Senator Fran Pavley, passed off the Assembly floor by one vote, but later more members added on "aye" votes to increase the margin of victory to eight.

SB 32 had an extensive network of help, including calls from the White House to members of the Assembly who were either a "no" vote or on the fence. Not only did the White House make calls on behalf of the bill, but the California Attorney General, the Speaker and the Governor pushed members until they were able to obtain their sought after vote count. Given the coast-to-coast lobbying effort, it was a sad testament to the advocates who supported the bill but were unable to provide enough science, facts, and credible information to reap the same outcome. AB 197 (Garcia), the companion bill to SB 32, also passed off the Assembly floor with roughly the same cadre of legislators who supported SB 32.

The passage of SB 1383 (Lara), the methane reduction measure, was never negotiated by the author until the last month of the session. The bill reduces methane by 40%, hydrofluorocarbon gases by 40% and anthropogenic black carbon by 50% below 2013 levels by 2030. The bill did not outline a path to achieve the goals and it still doesn't include any direction, although the bill rests on the Governor's desk with a likely signature.

The last night of session looked bleak. Three bills of interest to CIPA had passed in the name of clean water and clean air, however the proponents took no consideration of the fact that California oil producers (small to mid-sized) would be hurt the most with the higher costs of regulatory compliance, or outright prohibitions, that will put them out of business and threaten workers' jobs.

However, CIPA's priority bill, SB 1387 (De Leon) which would have created an additional three seats on the South Coast Air Quality Management District (SCAQMD) board went down in defeat garnering only 30 votes. The Pro Tem will return with a similar measure next year but the bill will likely suffer a similar fate. The De Leon bill had more than 100 organizations in opposition including the SCAQMD itself. The bill overstepped its boundaries and would have the state appointing 20% of a local governing board. It was imperative that the bill went down in defeat and good public policy prevailed.

Federal Judge Rejects BLM Plan to Allow Hydraulic Fracturing in California

A federal judge tentatively rejected a plan by the federal Bureau of Land Management to open more than 1,500 square miles of lands in central California to oil drilling and fracking.

The BLM failed to take a "hard look" at the environmental effects of the estimated 25 percent of new wells that would be devoted to fracking, U.S. District Judge Michael W. Fitzgerald wrote in the ruling. Judge Fitzgerald ruled that the BLM must provide more study on the effects fracking will have in the area. He gave the agency's attorneys until Sept. 21 to argue why he should not issue an injunction stopping the plan.

Catherine Reheis-Boyd, president of the oil-industry group the Western States Petroleum Association, said in response to the decision that "hydraulic fracturing and other well stimulation treatments in California have undergone rigorous analysis and review, culminating in the most stringent environmental standards nationwide."

"Countless independent, state, and federal science-based studies all agree, Ms. Boyd added, "Hydraulic fracturing, when regulated, remains a safe technology that provides enormous benefits to American businesses and consumers."

The land involved in the decision is about 1.1 million acres of public lands and federal mineral estate in the mostly agricultural central valley, the southern end of the Sierra Nevada, and parts of the central coast.

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The judge's decision says that over one-third of the federally listed threatened and endangered species that live in California can be found on the land that is in the plan, and the land also is home to many groundwater systems that contribute to water supplies for agricultural and residential use.

DOGGR Proposes Permanent Gas Storage Regs

Preliminary draft permanent regulations for natural gas storage facilities in California have been released by the Department of Conservation's Division of Oil, Gas and Geothermal Resources (DOGGR).

When finalized, the regulations will replace emergency regulations the agency issued earlier this year. The draft includes new safety and testing measures that would be required for the 12 gas storage fields in the state.

DOC and DOGGR officials called the current document a "discussion draft," intended to provide an opportunity for comment by the public and members of the industry before the formal rulemaking process begins.

Ken Harris, DOGGR's State Oil and Gas Supervisor, said the regulations focus on ensuring environmental protection and public safety.

Measures in the draft proposal include stiffer construction standards, including tubing sub-surface safety valves; more frequent testing, including pressure tests at least every two years; and mandatory risk management plans for responding to blowouts, spills, explosions, natural disasters and other emergencies.

DOGGR will receive public comments at two public workshops. The first will be held in Sacramento on August 9th. The second will be on August 11th in the San Fernando Valley area of Los Angeles, the site of the four-month-long natural gas leak from the Aliso Canyon storage facility operated by Southern California Gas Co.

That leak, sealed in February, triggered the emergency order from Gov. Jerry Brown that will be replaced by the final regulations.

Lawmakers Reach Cap & Trade Agreement

Despite uncertainty about the continued viability of the state's cap and trade program, the Governor and state lawmakers reached agreement on how to spend unallocated revenue from the program.

During the most recent carbon credit auction, the state only sold one-third of the available credits. This is an improvement from the previous auction were 90 percent of available credits were unsold.

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The California Chamber of Commerce currently has a pending lawsuit which challenges the legality of the program. The lawsuit calls the program a tax that was illegally passed by a majority of the Legislature, rather than the 2/3 vote threshold for tax hikes.

The $900 million agreement reserves about a third of the total amount of revenue for future expenditures ($462 million).

Gov. Jerry Brown Signs Emission Cutting Bills

On September 8, Governor Brown signed two bills — SB 32 by Sen. Fran Pavley, D-Agoura Hills, and AB 197 by Assemblyman Eduardo Garcia, D-Coachella, both are designated as 'critical' emissions-cutting bills.

SB 32 mandates that the state reduce its greenhouse gas emissions to 40 percent below 1990 levels by 2030. That extends the goal set by the state in 2006, when legislation was approved requiring the state to reduce emissions to 1990 levels by 2020. The state is on track to meet that goal, according to the governor's office.

Brown has set an ultimate goal of cutting emissions to 80 percent below 1990 levels by 2050. SB 32 codifies an executive order Brown issued last year.

AB 197 calls on the state to focus its pollution-reduction efforts on "disadvantaged" communities and to increase public oversight of climate programs.

The legislation was passed largely on party lines in Sacramento. Sen. Jim Nielsen, R-Gerber, said he supports the idea of cleaner air but said SB 32 gives too much power to the California Air Resources Board, which has "repeatedly failed to produce basic performance reviews of its climate change programs."

Critics have also questioned the viability of the cap-and-trade program, which caps the amount of greenhouse gas companies can produce -- but allows for the purchase at auction of emission permits, and allows businesses to trade credits among themselves. That program is the subject of a legal challenge, but Brown has said he is confident the program will be upheld and improved.

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Freeport-McMoRan Oil & Gas

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Pavley said SB 32 "will trigger more jobs in our thriving clean-energy sector and solidify California's leadership in demonstrating to the world that we can combat climate change while also spurring economic growth."

Assembly Speaker Anthony Rendon, D-Paramount, also hailed the legislation as way to clean the air while improving the economy.

Huge Oil Discovery in Texas?

Apache Corp. said it has discovered the equivalent of at least two billion barrels of oil in a new West Texas field that has the promise to become one of the biggest energy finds of the past decade.

The discovery, which Apache is calling "Alpine High," is in an area near the Davis Mountains that had been overlooked by geologists and engineers, who believed it would be a poor fit for hydraulic fracturing. It could be worth $8 billion by conservative estimates, or even 10 times more, according to the company. Shares rose by as much as 13% after U.S. markets opened Wednesday.

Apache started acquiring mineral rights in the area two years ago and subsequently discovered its potential. The company then quietly went about locking up more land in the field, believed to be up to 450,000 acres overall. Its position now exceeds 300,000 acres, or roughly two-thirds of the field, and is about 20 times the size of Manhattan.

The company has begun drilling in the area and says the early wells, which produce more natural gas than oil, are capable of providing at least a 30% profit margin at today's prices, including all costs associated with drilling.

Chapter President Announces Committee Chairs

Our newly elected Chapter President, John R. Billeaud, Landman, of Freeport-McMoRan Oil & Gas, announces his Committee Chairs for the 2016 – 2017 term. The Los Angeles Association of Professional Landmen will be greatly served by the following members:

Membership Chair	Cambria Rivard, J.D., Land Negotiator California Resource Corporation (562) 495-9373 (office) Cambria.rivard@crc.com
Hospitality Chair	Chip Hoover, Independent (310) 795-7300 – Cell chiphoover@hotmail.com Leah Hoover, Independent (310) 795-2272 – Cell
Education Chair	TBD
Publishing/Newsletter Chair	Randall Taylor, RPL, President Taylor Land Services (949) 495-4372 randall@taylorlandservice.com Joseph D. Munsey, RPL, Senior Land Advisor Southern California Gas Company (949) 361-8036 jmunsey@Semprautilities.com
Website/Communications Chair	TBD
AAPL Region VIII Director	TBD
Legislative Chair	Mike Flores, Legislative Affairs Luna/Glushon (310) 990-8657 – Cell mflores@lunaglushon.com
Mickelson Golf Classic Chair	Jason Downs, RPL Breitburn Management Company (213) 225.0347 jason.downs@breitburn.com John R. Billeaud, RPL Freeport-McMoRan Oil & Gas (661) 395-5286 jbilleau@fmi.com
Nominations Chair	L. Rae Connet PetroLand Services (310) 349-0051 rconnet@petrolandservice.com

Full Court Press: EPA Issues Final Rulemakings and a Draft Information Collection Request in Its Ongoing Effort to Reduce Methane Emissions from the Oil and Gas Industry

By Anthony R. Holtzman, Esq., Partner
Tad J. Macfarlan, Esq., Associate
Law Firm of K & L Gates

As part of President Obama's Climate Action Plan: Strategy to Reduce Methane Emissions, the U.S. Environmental Protection Agency ("EPA") on May 12, 2016 released a suite of final actions and a proposed action that are focused on methane and volatile organic compound ("VOC") emissions from the oil and natural gas industry. These developments significantly impact members of the industry, imposing new costs and compliance obligations on them and signaling that they will be saddled with even more costs and compliance obligations in the future.

The final actions include a rulemaking that establishes performance standards for methane and VOC emissions from new and modified sources and one that revises the agency's rules for "single source determinations." The proposed action is a draft Information Collection Request that would "require oil and natural gas companies to provide extensive information needed to develop regulations to reduce methane emissions from existing oil and gas sources." [1]

With these actions, EPA continues its efforts to address emissions of methane (a key contributor to global climate change) that occur during the production, processing, and transmission of oil and gas. According to the agency, the actions "keep the [Obama] Administration on track to achieve its goal of cutting methane emissions from the oil and gas sector by 40 to 45 percent from 2012 levels by 2025." [2]

PERFORMANCE STANDARDS FOR EMISSIONS FROM NEW AND MODIFIED SOURCES

In issuing its new performance standards for methane and VOC emissions from new and modified oil and gas sources, EPA built significantly on its prior actions in this field.

In 2012, under Section 111(b) of the Clean Air Act ("CAA"), EPA issued performance standards for VOC and sulfur dioxide emissions from various types of new and modified oil and gas sources. Those standards are codified at 40 C.F.R. Part 60, Subpart OOOO ("Quad-O") and address emissions from, in particular, the following sources: hydraulically fractured gas wells; certain fugitive equipment components at onshore gas processing plants; gas-sweetening units at those plants; and centrifugal compressors, reciprocating compressors, continuous-bleed pneumatic controllers, and storage vessels to the extent that they are used in one or more industry segments. EPA designed the Quad-O standards to achieve reductions in methane emissions, but only as a co-benefit to reducing VOC and sulfur dioxide emissions.

As an expansion of the Quad-O standards, the agency's new standards directly regulate methane and VOC emissions from various types of new and modified oil and gas sources. Some of those sources are already regulated under Quad-O, while others – like hydraulically fractured oil wells, pneumatic pumps, and certain equipment and components at compressor stations –are covered for the first time.

The standard for fugitive emissions at gas well sites, as one example, requires a well operator to periodically use a leak detection device to survey the well site for leaks of methane and VOCs and then repair any leaks that it discovers as a result of that process. The survey needs to cover a wide variety of components, including valves, connectors, pressure-relief devices, open-ended lines, flanges, closed vent systems, compressors, and thief hatches on controlled storage tanks.

The final version of the new standards differs, in various and sometimes significant respects, from the proposed version, which EPA published for public comment in September of 2015. [3] Unlike the proposed version, for example, the final version:

- Does not exempt "low production" oil and gas wells [4] from leak detection and repair requirements.
- Does not call for operators to conduct leak detection surveys on a schedule that fluctuates over time, depending on the results of the surveys. Rather, it requires them to conduct the surveys on a fixed schedule – twice per year for well sites and quarterly for compressor stations.

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- Allows an operator to conduct leak detection surveys by using not only "optical gas imaging" equipment, but also, as an alternative, either (i) "Method 21" (an approach that involves using a portable VOC monitoring instrument) or (ii) any emerging technology that is demonstrably as effective as Method 21 or optical gas imaging.
- Gives operators of hydraulically fractured oil wells a "phase-in" period, set at six months, before requiring them to use "green completion" technologies to capture emissions from those wells. [5]

According to EPA, its new standards, which will become effective 60 days after they are published in the Federal Register, will "reduce 510,000 short tons of methane in 2025, the equivalent of reducing 11 million metric tons of carbon dioxide." [6]

SINGLE SOURCE DETERMINATIONS: DEFINING "ADJACENT"

EPA also issued a regulatory definition of "adjacent" for purposes of making "single source determinations" in the oil and gas sector. Single source determinations are important to oil and gas operators because they can result in the "aggregation" of emissions from multiple sources, potentially triggering onerous "major source" air permit requirements. For a number of years, this issue has been a significant and evolving one. EPA has now brought some clarity to it, which should allow members of the industry to better plan their operations.

Under the CAA, a "stationary source" is defined as "any building, structure, facility, or installation" that emits air pollutants. [7] Longstanding EPA regulations provide that, in order for a group of air-pollutant-emitting units to be considered part of a single "building, structure, facility or installation," three requirements must be satisfied: (1) the units must belong to the same industrial grouping (which is determined with reference to whether they have the same primary Standard Industrial Classification code); (2) the units must be under the common control of the same person or corporate entity; and (3) the units must be located on one or more contiguous or adjacent properties. [8] Ultimately, as the U.S. Court of Appeals for the D.C. Circuit explained in Alabama Power Co. v. Costle (1979), the "EPA cannot treat … units as a single source unless they fit within the four permissible statutory terms." [9] In EPA's words, the units, taken together, must approximate the "common sense notion of 'plant'[.]" [10]

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In the oil and gas context, the concept of "adjacency" has been interpreted in differing and evolving ways over time. The issue came to a head in 2012, when, in Summit Petroleum Corp. v. EPA, the United States Court of Appeals for the Sixth Circuit rejected EPA's broad interpretation of the concept, under which it had aggregated emissions from physically remote facilities because, in its view, they were "functionally interdependent." [11] The court directed the agency to apply the "ordinary, i.e., physical and geographical, meaning of" the term "adjacent." [12] Later, in 2014, the D.C. Circuit directed EPA to apply the Sixth Circuit's interpretation on a nationwide basis, unless and until it amended its single source determination rules or regional consistency rules. [13]

Against this backdrop, in September of 2015, EPA published for public comment two alternative options for a regulatory definition of "adjacent" in the oil and gas context:

- Define adjacent based solely on proximity by establishing that sources are adjacent only "if they are located on the same surface site, or on surface sites that are located within ¼ mile of one another." [14]
- Define adjacent with reference to both proximity and functional interrelatedness by establishing that sources are adjacent if they are either(1) separated by a distance of less than ¼ mile or (2) separated by a distance of ¼ mile or more, but have an "exclusive functional interrelatedness." [15]

In response to the oil and gas industry's substantial concerns, EPA has now declined to adopt the second option – which would have effectively codified its pre-Summit policy of aggregating distant sources based on "functional interrelatedness" – and adopted the first option, which reflects a more objective approach to the analysis. In doing so, moreover, it modified the first option by establishing that "emitting equipment located on separate surface sites within ¼ mile of each other would only be aggregated as a single stationary source if the emitting equipment alsohave a relationship that meets the 'common sense notion of a plant.'" [16] Pollutant-emitting units would have this relationship if they "share equipment" that is necessary for processing or storing oil or gas. [17] EPA explained that, as an example, if equipment that is used to process or store oil or gas is located within a ¼ mile of a commonly-owned well site, it is part of the same stationary source as the well site. [18] On the other hand, two well sites that feed a common pipeline are not part of the same stationary source if they do not share processing or storage equipment. [19] While this approach is not without its own ambiguities, it adds a degree of clarity and certainty to an area of law that has been in flux for many years.

EPA's new regulatory definition of "adjacent" will take effect 60 days after it is published in the Federal Register.

DRAFT INFORMATION COLLECTION REQUEST

EPA's draft Information Collection Request ("ICR") represents its first step towards issuing "comprehensive regulations to reduce [methane and VOC] emissions from existing sources in the large and complex oil and gas industry." [20]

The draft ICR has two main components. The first one is an "operator survey," which would call for information about the number and types of equipment that exist at onshore oil and gas production facilities. The second part is a "facility survey," which would seek information about the methane emissions sources and emissions control devices and practices that are used at onshore production, gathering and boosting, processing, compression, transmission, pipeline, natural gas storage, liquefied natural gas ("LNG") storage, and LNG import and export facilities. Recipients of the ICR would have 30 days to respond to the operator survey and 120 days to respond to the facility survey. Under Section 114(a) of the CAA, the responses would be mandatory.

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Through the ICR process, EPA seeks to better understand "what emission controls are being used in the field, how those are configured, whether electricity or generating capacity is available, and how often sites are staffed or visited" – with the ultimate goal of determining how to "best develop and apply standards to effectively reduce [methane and VOC] emissions from existing sources." [21]

As a corollary to issuing the draft ICR, EPA announced that, in the near future, it will issue a "voluntary Request for Information" that will invite members of the oil and gas industry, states, nongovernmental organizations, academicians, and others to "provide information on innovative strategies to accurately and cost-effectively locate, measure and mitigate methane emissions." [22]

EPA will accept public comments on the draft ICR until 60 days after it is published in the Federal Register.

CONCLUSION

EPA's final rules for methane and VOC emissions from new and modified oil and gas sources contain myriad requirements, which industry members will need to evaluate in detail, with the assistance of their technical and legal advisors, in order to ensure that they are complying with them by the effective date. Meanwhile, oil and gas operators who are, or will soon be, involved in state or federal air permitting processes (or related litigation) should carefully review the final "single source determination" rules to determine their affect, if any, on their projects.

Over the longer term, EPA's draft ICR portends a high-stakes rulemaking that could require significant, and potentially costly, reductions in methane emissions from existing oil and gas sources. While it seems possible that EPA will complete the ICR before the end of the year, the same cannot be said for any final rulemaking – the ultimate fate of which will therefore probably rest in the hands of the next presidential administration. As EPA works towards issuing standards for existing sources, industry members should carefully monitor and participate in the regulatory and political processes to ensure that any new requirements are grounded in science and EPA's regulatory authority.

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Mr. Macfarlan can be reached at tad.Macfarlan@klgates.com.

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Notes:

[1] EPA, EPA's Actions to Reduce Methane Emissions from the Oil and Natural Gas Industry: Draft Information Collection Request for Existing Sources ("Draft ICR Fact Sheet") at 1 (emphasis added), https://www3.epa.gov/airquality/oilandgas/may2016/icr-fs.pdf.

[2] EPA, EPA's Actions to Reduce Methane Emissions from the Oil and Natural Gas Industry: Final Rules and Draft Information Collection Request ("Overview Fact Sheet") at 1, https://www3.epa.gov/airquality/oilandgas/may2016/nsps-overview-fs.pdf.

[3] See 80 Fed. Reg. 56593 (Sept. 18, 2015).

[4] Low production wells are those for which, over the first 30 days of production, the average combined oil and gas production is less than 15 barrels of oil equivalent per day.

[5] EPA added the phase-in period "to give the industry time to ensure that a sufficient supply of green completion equipment and personnel is available." This development is therefore a positive one for the industry. EPA, Summary of Requirements for Processes and Equipment at Oil Well Sites at 1, https://www3.epa.gov/airquality/oilandgas/may2016/nsps-oil-well-fs.pdf.

[6] Overview Fact Sheet at 4.

[7] 42 U.S.C. § 7411(a)(3).

[8] See, e.g., 40 C.F.R. § 52.21(b)(6).

[9] 636 F.2d 323, 397 (D.C. Cir. 1979).

[10] 45 Fed. Reg. 52676, 52695 (Aug. 7, 1980).

[11] 690 F.3d 733 (6th Cir. 2012).

[12] Id. at 735.

[13] See National Envtl. Dev. Association's Clean Air Project v. EPA, 752 F.3d 999, 1009 (D.C. Cir. 2014). In August of 2015, EPA released proposed amendments to its regional consistency rules. See 80 Fed. Reg. 50250 (Aug. 19, 2015). The proposed amendments would allow the agency's regions to apply Clean Air Act requirements differently in different parts of the country as necessary to adhere to differing federal court decisions. Id.

[14] 80 Fed. Reg. 56579, 56590 (Sept. 18, 2015).

[15] Id.

[16] Source Determination for Certain Emission Units in the Oil and Natural Gas Sector, Pre-publication Rule at 8 (emphasis added), https://www3.epa.gov/airquality/oilandgas/may2016/source-determination-finalrule.pdf.

[17] Id. at 9-10, 43.

[18] Id. at 10.

[19] Id.

[20] Draft ICR Fact Sheet at 1.

[21] Id. at 2.

[22] Id.

EDUCATIONAL CORNER

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.

General Credit Courses:

Environmental Awareness for Today's Land Professional
Credits approved: 10 CPL/ESA/RPL/RL
$75.00

#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)
Credits approved: 4 CPL/ESA/RPL/RL
$30.00

#109 Common Law Environmental Issues and Liability for Unplugged Wells
Credits approved: 4 CPL/ESA/RPL/RL
$30.00

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

34th Annual *2016 West Coast Landmen's Institute*

Bakersfield, California

Wednesday – Friday

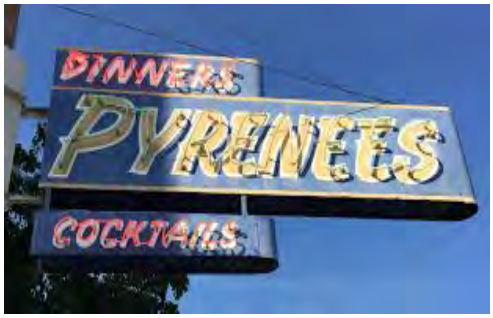
September 28 – 30, 2016

The Bakersfield Association of Professional Landmen (BAPL) and the Los Angeles Association of Professional Landmen (LAAPL) proudly present the 34th Annual West Coast Landmen's Institute, to be held in Bakersfield, California at the Aera Energy LLC Seminar Facility. As in the past, this year's Institute should prove to be a superb learning opportunity for all land professionals, attorneys, and other professionals who work in the oil and gas industry.

Registration Fees for members of the BAPL or LAAPL are $175 ($225 if received after September 14th); $225 for non-members of the BAPL or LAAPL ($275 if received after September 14th); $100 for "Independents*" ($150 if received after September 14th); $150 for non-member "Independents" ($200 if received after September 14th). These registration fees include attendance to the Institute, the Wednesday Reception, Thursday Lunch and Dinner, breakfast each morning, and break refreshments

*In this context, an Independent Landman is defined as any individual who receives compensation for their services, either on a per diem or hourly basis (1099) and who does not routinely employ other Landmen to work on a contract basis for their benefit. In other words, Brokers and Independents who have assistants do not qualify as an Independent Landman for the discounted registration fee.

The AAPL will award RL/RLP Continuing Education Credits or CPL Recertification Credits for participation in this Institute. AAPL Attendance Affidavits will be available at this event. Day Carter Murphy will be coordinating CLE credits for the legal profession.



For those attending from out of town, we have three hotels available:

The Padre Hotel: 1702 18th Street, 661-427-4900
$159/night and up. http://www.thepadrehotel.com

Homewood Suites: 1505 Mill Rock Way, 661-664-0400
$119-$129/night (mention you are attending a seminar at Aera Energy LLC to receive the reduced rate). There are a limited number of rooms at the reduced rate, so book your room early.

DoubleTree: 3100 Camino Del Rio Ct., 661-323-7111
$85/night and up.
http://doubletree3.hilton.com/en/hotels/california/doubletree-by-hilton-hotel-bakersfield-RLBK-DT/index.html

Individuals will be responsible for their own hotel reservations.

We have reserved a limited number of tee times starting golf on Wednesday at the Kern River Golf Course (prior to the WCLI) for our participants *($65 per player - includes a box lunch and adult refreshments).* Please remember to complete the attached Sponsor/ Registration form if you wish to play golf or attend the WCLI.

34th ANNUAL WCLI REGISTRATION FORM

Please Register Early As There Is Limited Space

Complete name and company information requested below. If you plan to play golf on Wednesday afternoon, please check the appropriate box and make your payment along with your registration fees. Mail this section with your check payable to: BAPL, Attn. Yvonne Hicks, PO Box 10525, Bakersfield, CA 93389.

Member Prices:	Non- Member Prices:	Member Independent Prices:	Non- Member Independent Prices:
☐ $175 if paid by 9/14	☐ $225 if paid by 9/14	☐ $100 if paid by 9/14	☐ $150 if paid by 9/14
☐ $225 if paid **after** 9/14	☐ $275 if paid **after** 9/14	☐ $150 if paid **after** 9/14	☐ $200 if paid **after** 9/14

$100 per Spouse/Significant Other, or non-participating guest fee (includes reception, breakfasts, luncheons, and dinner). One price for participating either one or all three days. Number of additional guests _____

Events:

☐ Wednesday Reception at The Mark, 9/28 Number of Attendees _____
☐ Thursday Breakfast at Aera Energy LLC 9/29 Number of Attendees_____
☐ Thursday Lunch at Aera Energy LLC, 9/29 Number of Attendees_____
☐ Thursday Evening Basque Crawl, 9/29 Number of Attendees_____
☐ Friday Breakfast at Aera Energy LLC, 9/30 Number of Attendees_____
☐ Friday Lunch at Aera Energy LLC, 9/30 Number of Attendees_____

☐ **Check this box if you are a participant attending under a Sponsorship**
☐ **Check this box if you are a Speaker**

Name:_____ Guest:_____

Company:_____ Address:_____

City:_____ State:_____ Zip:_____

Phone #:_____ Email:_____ CPL or RLP #:_____

TOTAL ENCLOSED $_____ ¨ I am a Sponsor – Form Attached

For questions regarding Registration and Sponsorships, please contact Yvonne Hicks at 661.328.5530 or email yvonne@mavpetinc.com

☐ Golf at Kern River Golf Course (includes a box lunch and adult refreshments) Wednesday 9/28 – $65.00

No. of Players:_____

Golf Partners:_____

Please note any preference for golfing partners above.

Payment for golf must be received in advance! Please include payment with your registration.
For questions regarding Golf, please contact R. Michael McPhetridge at 661.333.6119 or email rmm@rmmenergypartnersllc.com

Please note: The WCLI retains cancellation rights. In the unlikely event of cancellation, the WCLI Committee will make every attempt to notify pre-registrants. Refund requests within two (2) weeks of the Institute will be assessed a $50 Administrative Fee.

2016 WCLI Sponsorship Levels

Thank you for your interest in sponsoring the West Coast Landmen's Institute. Below is an overview of our sponsorship opportunities – we hope you'll find one that best suits the needs of your organization.

SPONSOR LEVELS:	ONE STAR	TWO STAR	THREE STAR	FOUR STAR	FIVE STAR	SIX STAR
Benefits:	*$400*	*$800*	*$1,500*	*$2,000*	*$3,500*	*$5,000*
Complimentary WCLI Registration	One Tuition	One Tuition	Two Tuitions	Three Tuitions	Five Tuitions	Six Tuitions
Complimentary Guest Registration	-	One Guest	Two Guests	Three Guests	Five Guests	Six Guests
Golf Registration	-	One Golf Registration	Two Golf Registrations	Three Golf Registrations	Four Golf Registrations	Four Golf Registrations

All of our sponsors will also receive:

- **Name Badge Recognition Ribbon**
- **Company Logo Placement on Event Banners and at Registration Table**
- **Authorization to Provide Sponsor Giveaways to Attendees**
- **Space on Sponsor Table to Display Company Information/Handouts**

Company: _____

Contact: _____

Address: _____

City: _____

State: _____ Zip Code: _____

Phone: (_____) _____

For online *Sponsorships, golf, and registration*, please use **Google Chrome** or **Safari**, there are problems if you use Internet Explorer

Sponsorship Level (*please check one*):

One Star - $400 ☐ Four Stars - $2,000 ☐

Two Stars - $800 ☐ Five Stars - $3,500 ☐

Three Stars - $1,500 ☐ Six Stars - $5,000 ☐

Sponsorships, golf, and registration can only be paid via check or online at:

- Attendee registration: https://squareup.com/market/bakersfield-association-of-professional-landmen/west-coast-landmen-s-institute-registration
- Golf registration: https://squareup.com/market/bakersfield-association-of-professional-landmen/west-coast-landmen-s-institute-golf-tournament
- Sponsorship: https://squareup.com/market/bakersfield-association-of-professional-landmen/west-coast-landmen-s-institute-sponsorship-opportunities

Please list the participants attending under your sponsorship

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

Note: Complementary Registrants must indicate as such on their Registration Form.

34th Annual

WEST COAST LANDMEN'S INSTITUTE

Educational Courses for WCLI 2016

Wednesday, September 28th

Noon	Kern River Golf Course
6:30 PM - 9:00 PM	Welcome Reception – The Mark

Thursday, September 29th

7:00 AM - 8:00 AM	Registration and Breakfast
8:05 AM - 8:15 AM	Opening Remarks, Agenda Adjustments, Etc. Mike Flores, Legislative Affairs for LAAPL & BAPL Law Firm of Luna & Glushon ***Legislative Update [Local and National]***
8:15 AM - 9:15 AM	Michael J. Sherman, Esq., and Thomas A. Henry, Esq., Law Firm of Stoel Rives LLP ***"Surviving the Drought: Why You Should Care About California Water Rights and Regulation"***
9:15 AM - 9:45 AM	Pamela D. Feist, CPL President, American Association of Professional Landman Land Manager of Lakewood Exploration and Vice President of Lakewood Operating Ltd. of Midland, TX.
9:45 AM – 10:00 AM	**Break**
10:00 AM - Noon	Jack Quirk, Esq. Law Firm of Bright and Brown Cecilia Rendon, Esq. Law Firm of Bright and Brown Emelie Macpherson, Macpherson Oil Company ***Part I - "Unfortunate Consistency & Boilerplate Provisions – Half Vast Thoughts of Half Fast Thinkers"*** *10 minute break* ***Part II - "Unfortunate Consistency & Boilerplate Provisions – Half Vast Thoughts of Half Fast Thinkers***
Noon - 1:30 PM	LUNCH

Thursday, September 29th (Cont.)

1:30 pm - 2:30 pm	David Ossentjuk. Esq., Law Firm of Ossentjuk & Botti Gregg Paterson, Esq., Law Firm of Burke, Williams & Sorensen, LLP ***"Legislative Law and Criminal Charges – What Happens When Legislative Violations Occur"***
2:30 PM – 3:30 PM	Tracy K. Hunckler, Esq., Law Firm of Day Carter Murphy LLP & E. Ryan Stephensen, Esq., Law Firm of Day Carter Murphy LLP **"Cotenancy Rights and Obligations, With and Without a Joint Operating Agreement"**
3:30 PM - 3:45 PM	**Break**
3:45 PM - 4:45 PM	Jeffrey A. Green, Esq., General Counsel, Grimmway Enterprises, Inc. **"Organic Farming Operations and Oil & Gas Rights"**
6:00PM – 8:30 PM	***SOMETHING DIFFERENT*** – The Bakersfield Basque Crawl

Friday, September 30th

7:30 AM - 8:15 AM	Breakfast
8:15 AM - 9:15 AM	Willie Rivera, Director of Regulatory Affairs, California Independent Petroleum Association ***Legislative Update - "Current Regulatory/Legislative Battles and Climate Change"***
9:15 AM – 9:25 AM	**Break**
9:25 AM - 11:00 AM	**PANEL DISCUSSION** ***"Public Relations and Addressing Outside Stakeholders"*** **Panel Host** – Cindy Pollard, Public Affairs Director, Aera Energy LLC **Panelist** – Edward S. Hazard, President, NARO-California **Panelist** – Jenifer Pitcher, Senior Coordinator, San Joaquin Valley Region, Western States Petroleum Association 5 Minute Break ***PANEL DISCUSSION Cont. "Public Relations and Addressing Outside Stakeholders"***
11:00 AM – Noon	Chris Boyd, CPL, Devilwater Energy Services LLC ***"Oil Prices: Why They Have Fallen and When Will They Get Up"***
Noon	Closing Remarks

Speakers and topics subject to change in the event of a speaker cancellation.