



The Override

Every Landman Wants One!

Volume X, Issue VI

January, 2017



Presidents Message

John R. Billeaud, RPL
President
Sentinel Peak Resources

Dear LAAPL members and friends,

I hope you all had a pleasant and enjoyable holiday season and are primed and ready for what could be a busy year in our industry - provided the price of crude oil continues to climb at a healthy rate. I say a healthy rate because crude finished up by 45% in 2016 which represents the largest annual rally since 2009. And, what can I say about the start to 2017 in terms of precipitation? Wow! It looks like we may be on the way to setting a record or two and it's sure to be an epic season in the mountains for all you skiers/



snowboarders.

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In case you haven't read the LANDMAN January/February publication, AAPL reported that it released a new "AAPL Contract Center" in October which contains several forms that Landmen use on a regular basis including the new 610-2015 Model Form JOA; this should be a valuable resource for land professionals going forward so be sure to look into it.

With regard to the never-ending rules and regulations for oil and gas operators proposed by the State Legislators, unless I'm missing something, I haven't heard anything alarming recently. I suppose we can credit that to the resilient efforts of organizations like CIPA. It's either that or they've run out of ideas - I doubt the latter. Nevertheless, I am interested to hear the next update from our Legislative Affairs Chair, Mike Flores.

We do have some sad news to pass on. Mr. Dennis Luna, attorney/partner with Luna & Glushon, passed away on

[Presidents Message continued on page 2](#)

Meeting Luncheon Speaker

"The Jonah Gas Field, Sublette County, WY: Recent Developments"

Katherine (Katie) Kovac, Senior Geologist, Jonah Energy LLC, Denver, CO. Katie has 15 years professional experience as a geologist, mostly in California. Currently, she is working the Jonah Gas Field in Wyoming and A&D projects. Previous to Jonah Energy, she worked at Occidental Petroleum in Long Beach for 5 years. Originally an East Coaster, from New Jersey, she has spent her geologic career out West, with positions in Salt Lake City, Bakersfield, Long Beach, and Denver. Her expertise is in the energy industry, with experience in Geothermal, Oil, and Natural Gas. She received both a B.S. and M.S. in Geology (Thesis: Geologic Framework and Paragenesis of the Coso Geothermal Field, CA) from the University of Utah. Katie founded the Los Angeles/Orange County Chapter of the AWG (Association for Women Geoscientists) in 2012. She has previously served as LABGS Vice President and Program Chair.



Opinionated Corner

**Joe Munsey, RPL
Director**

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

We are dedicating this issue of *The Override* in memory of long time LAAPL member and supporter, Dennis Luna, Esq., of the Law Firm of Luna Glushon.

Dennis may not have created any waves outside the California Oil Patch within the landman community, however his support of Mike Flores, Luna Glushon's Legislative Affairs representative, in his duties as LAAPL Legislative Affairs Chair and Past AAPL Region VIII Director was felt. Both the LAAPL and AAPL, through Mike, have felt the impact and support of our friend and colleague, Dennis Luna. May he rest in peace.

We wish all a Happy New Year. Trusting all enjoyed your version of the holidays; Christmas, Chanukah or Three Kings Days.



**Randall Taylor, RPL
Petroleum Landman**

Taylor Land Service, Inc.
30101 Town Center Drive
Suite 200

Laguna Niguel, CA 92677
949-495-4372

randall@taylorlandservice.com

November 2016 Board Meeting Summary

**Brandi Decker
California Resources Corporation
LAAPL Secretary**

The LAAPL Board of Directors and Committee Members held their regular meeting on Thursday, November 17, 2016 led by President John R. Billeaud, RPL. The topics discussed at the meeting are as follows:

- Updating Statement of Information to California Secretary of State for Franchise Tax Board
- Received speaker gifts for 2016-2017 speakers along with donated AAPG books from Sanford Starman
- Processing the update for the new LAAPL website.
- Approved motion for membership application for Blake Barton (Signal Hill) and Brennan Guldner (Chevron)
- Submitting the November 2016 newsletter to AAPL for small-size association (less than 100 members) newsletter award
- Created Google Docs for the Board to easily share pertinent information
- Board members are scheduled to take uniform photos for the LAAPL website at the March 2017 meeting
- Jason Downs wasn't able to attend AAPL meeting in December in Virginia but is scheduled to attend the March and June meetings
- Approved motion to affirm the organization's name change from Los Angeles Association of Petroleum Landmen to Los Angeles Association of Professional Landmen
- Approved motion to have the Secretary include web link in luncheon email announcements to receive AAPL credits for attending the LAAPL luncheons
- Approved motion to donate an additional amount of \$1,638.17 to R. M. Pyles Boys Camp from the proceeds of the Mickelson Golf Tournament

We encourage all members to attend our LAAPL Board Meetings. The meetings are typically held in the same room as the luncheon immediately after the meeting is adjourned.

Presidents Message
continued from page 1

December 28th. We all knew Dennis as a kind man, prominent attorney, and strong supporter of LAAPL. We extend our deepest condolences to his family and friends. Dennis will be sorely missed.

As many of you know, our January luncheon is held jointly with the LA Basin Geological Society (LABGS) at their venue in Long Beach. The topic this year is "The Jonah Gas Field, Sublette County, Wyoming: Recent Developments" and the speaker is Katherine Kovac. The luncheon will be held on Thursday, January 26th at the same time as our luncheons (11:30 am) and should be an interesting presentation. We hope to see all of you there on Thursday.

Regards,

John R. Billeaud, RPL, President



Nominations for LAAPL 2017 - 2018 Officers

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

(Nominations for LAAPL 2017 - 2018 Officers)

It is that time of the year to start considering a run for a LAAPL Chapter Officer for the 2017 – 2018 term. The following offices are open:

President¹
Vice President
Treasurer
Secretary
LAAPL Local Director
LAAPL Local Director

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

2015–2016 Officers & Board of Directors

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661-395-5286

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Sarah Bobbe, CPL
Signal Hill Petroleum
562.595.6440 ext. 5275

Past President
Ernest Guadiana, Esq.
Elkins Kalt Weintraub Reuben Gartside LLP
310-746-4425

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Brandi Decker
California Resources Corporation
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Treasurer
Suzy Husner
Independent
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Director
Joe Munsey, RPL
Southern California Gas Company
949-361-8036

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

Region VIII AAPL Director
Jason Downs, RPL
Breitburn Management Co.
213-225-0347

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

Communications/Website Chair
Suzy Husner
Independent
562-587-2402

Membership Chair
Cambria Rivard, J.D.
California Resources Corporation
562-495-9373

Education Chair
TBD

Legislative Affairs Chair
Mike Flores
Luna & Glushon
310-556-1444

Advertising/Hospitality Chairs
Chip Hoover, Independent
310-795-7300
Leah Hoover, Independent
310-795-2272

Nominations Chair
L. Rae Connet, Esq.
PetroLand Services
310-349-0051

Golf Chairs
Jason Downs, RPL
John R. Billeaud, RPL
Chip Hoover
Leah Hoover

LAAPL and LABGS Hold Annual Joint Luncheon

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

When: Thursday, Jan 26th [Fourth
Thursday of the Month]

Time: 11:30am

Cost: \$20 with reservations
\$25 without reservations

Meeting Place: The Grand at Willow
Street Conference Center

4101 East Willow Street

Long Beach, CA

Speaker: Katherine (Katie) Kovac,
Senior Geologist, Jonah Energy LLC,
Denver, CO

Topic: "The Jonah Gas Field, Sublette
County, WY: Recent Developments"

Contact: Ryan Weller

562-637-6019

ryweller@gmail.com

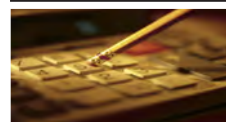
Online at www.labgs.org.



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Treasurer's Report

As of 9/30/2016, the LAAPL account showed a balance of	\$26,043.16
Deposits	\$1,640.00
Total Checks, Withdrawals, Transfers	\$2,433.17
Balance as of 9/30/2016	\$25,249.99
Merrill Lynch Money Account shows a total	TBA

Early Bird Reminder for LAAPL Annual Dues

Suzy Husner, Independent LAAPL Treasurer

Suzy Husner, Chapter Treasurer will be calling for dues late Spring; which will be due by June 2017 for the 2017 – 2018 year. Cost: still a mere bargain at \$40.00.

Scheduled LAAPL Luncheon Topics and Dates

January 26, 2017

[4TH Thursday]

Annual Joint Meeting with

Los Angeles Basin Geological Society

March 16, 2017

Debra Russell, Community Relations
Director, Signal Hill Petroleum

"Industry Ethics and Stewardship"

May 18, 2017

Wayne Rosenbaum, Esq., Partner,
Oppen & Varco, LLP

Jeremy N. Jungreis, Esq., Rutan and
Tucker

"Stormwater Regulations and Their
Impacts on the California Oil and
Gas Industry"

Officer Elections

Lawyers' Joke of the Month

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

After receiving an audit letter from the IRS, an oil and gas operator called her accountant.

OPERATOR: (pleading): "What are they doing to me? Why are they doing this to me?"

ACCOUNTANT (calming): "Don't worry about it. I've got all the receipts, the account is up to date. There's no problem. But let me give you some advice. When you go to the audit, don't overdress. Wear work boots, blue jeans and a polo shirt. If they believe you are a hardworking blue collar lady, they'll go easy on you.

Then she talked it over with the lawyer.

LAWYER: "There's no problem, I'm sure we have the receipts, I'm sure everything is up to date.

You've got a great accountant, don't worry about it. But let me give you a tip. When you go to the audit, you need to make a good impression. Don't dress for the field. Wear your best suit--look like somebody. Because if you look like somebody they respect you and will go easy on you."

Walking the street that night, torn with worry, she bumped into the head of the land department and told her what was going on.

LAND PROFESSIONAL:

"This is like a nervous bride wondering what to wear on her wedding night. The bride's father tells her to wear a nightgown with a high collar and long sleeves and a full-length robe--cover up, you know, be a little demure. But the mother says, 'Don't be silly. Wear a "negligee" look a little sexy.' And boss, I gotta tell you, just like the bride on her wedding night, the auditor knows what they're looking for--makes no difference what you wear.

Our Honorable Guests

We literally had so many guests at our last meeting in November our landman scribe could not keep up with the crowd. The scribe apologizes for his/her failure to inform our faithful readers who our guests were and has pledged to reform himself/herself.



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Rick Peace, President

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Dennis Luna, Esq. - Remembering

Mike Flores, Legislative Affairs: It is with great sadness that I share the passing of long time LAAPL member and supporter, Dennis Luna, Esq., on December 28, due to complications from lung cancer. Dennis had bravely fought his battle with cancer for the past year.



Dennis Luna, Esq.

August 21, 1946 - December 28, 2016

Dennis was born in Los Angeles, to Henry and Tillie Luna. He grew up in Downey, California and was always proud of his Downey roots. During grade school and junior high, he lived in the library, soaking up as much knowledge as he could in every subject. He discovered that if he read three different books on the same subject, invariably one would explain some particular bit of knowledge better than either of the other two, and this became his method of self-study. From his time there, it became clear that the study of math and science was his future. While attending Warren High School, not only did

he excel in school, he ran cross country and he held one of the top times in southern California during his senior season. It was during his senior year in high school, while attending a USC Admissions Open House, that his life was forever changed. Always excelling in math and science, he thought he would become an engineer, but a professor for the Petroleum Engineering School took notice of him, sat him down, and shared with him the many unique opportunities in the oil & gas industry. When Dennis entered USC the following fall, his major was Petroleum Engineering. He liked it so much, that he continued on, getting his Master of Science; still thirsty for learning, he earned his MBA. He was very proud that he held three degrees from USC and was a very proud Trojan, becoming an active and supportive alumni his whole life.

Dennis thought he was done with school and for several years worked as a wildcatter in the Signal Hill oilfields, getting his hands dirty, learning the tools of the trade. All his skills and knowledge were tested one day when a drilling well he was on experienced a pending blow-out. Dennis was the only engineer on the site and he led his team of roustabouts on a hair-raising 14 hour battle to regain control of their well. He enjoyed being a working petroleum engineer, but again, providence intervened; when a retired judge and family friend advised him that he should consider the law as a profession, at the judge's suggestion, Dennis took the LSAT, scoring a 98 percentile, much to his surprise. Dennis spent some time considering his options and decided that he would apply to only one school, Harvard Law, and if he didn't get in, it wasn't meant to be. Of course, he did get in, and went back to Boston for three years and it was there that he met his future wife (and love of his life), Barbara, who was a student in the Math department. He graduated with honors and came back to Los Angeles ready to take on the world.

As a young attorney at McCutchen, Black, Verleger & Shea, he was involved in some of the biggest energy transactions of the time, including representing an international oil company in a major litigation regarding its unit ownership rights in Prudhoe Bay, Alaska, the largest oil field in North America. Fatefully, it was his long experience as a petroleum engineer that allowed him to insightfully formulate and present the data that won his client's case. He also represented a client in the

Dennis Luna
continued on page 6

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For more information, contact:

Dennis R. Luna

Luna & Glushon

at: (310) 556-1444 or
dluna@lunaglushon.com
1801 Century Park East, Suite 2400
Los Angeles, CA 90067-2326

"My experience as a petroleum engineer (PE) and a Harvard Law graduate, allows our firm to provide you with legal guidance in any oil and gas matter."
... Dennis R. Luna

www.lunaglushon.com



Dennis Luna
continued from page 5

acquisition of a multi-billion dollar oil and gas property in Kern County, California, formerly owned by the Belridge Oil Company, still the largest oil field in California.

In 1988, Dennis joined the firm of Richman, Luna, Kichaven & Glushon as a partner. In 2004, the firm changed its legal name to Luna & Glushon, resulting in a partnership with his close friend, Rob Glushon, whom he had originally met when they were coaching their two sons' Little League team.

Dennis became known as one of the top oil & gas attorneys in California and was very proud that he was one of the few Latino attorneys in the industry. He always remembered the good advice and help he had received in his career and always wanted to do the same, serving as a mentor to many young men and women, not just in oil & gas, but also in law, business and politics.

Dennis had a very strong desire to be of service and to give back, and he held many prestigious volunteer posts in the City of Los Angeles during the Tom Bradley and Richard Riordan administrations, including serving as Commissioner and Treasurer for both the Los Angeles Community Redevelopment Agency (the largest such agency in the United States) and the Community Redevelopment Financing Authority of the City of Los Angeles. He also served as a Commissioner of the Los Angeles Recreation and Parks Department and as an Alternate Commissioner on the Los Angeles Memorial Coliseum Commission.

He was also active in non-profit organizations: he served as Chairman of the Board of the Angels' Flight Railway Foundation and was a former Director of the Economic Development Corporation of Los Angeles County. In 1999, he received recognition for his service as the Board Volunteer of the Year by the Los Angeles Area Boys & Girls Club of America.

For the past year, Dennis fought a brave battle with lung cancer, continuing to work doing what he loved. He carried on with his leadership, advice and mentoring, always the invaluable colleague and friend. We will miss his great and generous spirit and his example of service and giving to those less fortunate.

Dennis is survived by his wife Barbara of 42 years, his son, John, his daughter, Katherine, his father, Henry and sister, Valeria Lee. He is also survived by his son's wife, Liz and their daughter, Sofia, and many relatives and friends.

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BAPL President 1985-86 and 2003-04

AAPL Director 1988-90, 2002-03, and 2004-07

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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

None

Transfers

Jennifer L. Cox, CPL

Land Manager

Sentinel Peak Resources

1200 Discovery Drive, Suite 100

Bakersfield, CA 93309

P: (661) 395-5276

E: jcox@sentinelpeakresources.com

Previously

Land Manager

Freeport-McMoRan Oil & Gas

John R. Billeaud, RPL

Senior Landman

Sentinel Peak Resources

1200 Discovery Drive, Suite 100

Bakersfield, CA 93309

P: (661) 395-5286

E: jbilleaud@sentinelpeakresources.com

Previously

John R. Billeaud, RPL

Landman

Freeport-McMoRan Oil & Gas

Welcome Back

None

New Member Requests

Brennan Guldner

Chevron USA Inc.

9525 Camino Media

Bakersfield, CA 93311

(661) 412-6251

BrennanGuldner@Chevron.com

Blake Barton

Signal Hill Petroleum

Land Technician

2633 Cherry Ave

Signal Hill, CA 90755

(562) 326-5249

bbarton@shpi.net

Gregg Kozlowski

President

Makoil Inc.

910 Calle Negocio, #210

San Clemente, CA 92673

(949) 462-9010

Makoil@msn.com

Rose Pickenpaugh

Manager Land

California Resources Corporation

10000 Stockdale HWY

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(661) 412-5159

Rose.pickenpaugh@crc.com



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Educational Corner

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

[#102](#) The Outer Continental Shelf 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

[#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

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

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

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

 	
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Guest Article

CAN MINERAL RIGHTS IMPACT MORTGAGES?

Chuck West, Esq., CCIM

*Permission to Publish – All Rights Reserved
Originally Published in the Westline November 2016*

Reuters News recently reported what is turning out to be a big surprise to many property owners across the Country- the fact that they do not own the mineral rights beneath their property. With fracking and horizontal drilling, ownership of the surface rights is typically irrelevant. While laws differ from state to state generally the owner of the mineral rights has the right to access those minerals. Sometimes this may result in a well being placed on the surface or access being granted through an adjacent property with horizontal or slant drilling.

With recent litigation and new fracking techniques an often silent relationship between surface and mineral rights owners will become more fractious. Some lenders are refusing to loan on properties where the mineral rights have been transferred.

Title companies do not insure mineral rights or give you a clue as to who owns them. This exception on insurance makes it important when you are selling property not to mislead the buyer into thinking they are getting mineral rights. It is better to state in your purchase contract that you do not own the mineral rights or use a quitclaim deed rather than a warranty deed when transferring title. A quitclaim deed only transfers what you actually own and gives the buyer no seller warranties. If title insurance is being obtained a buyer may not care what deed is being used.

Mr. West can be reached at cwestucla@yahoo.com.



The Law Firm of
Bright and Brown
Oil, Gas and Environmental Lawyers

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- Exploration agreements and joint operations advice
- Permitting and regulatory approvals
- Environmental compliance
- Air quality
- Water quality and water rights
- Litigation
- Property tax issues



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Case of the Month - Oil & Gas

CASE STUDY: COYOTE LAKE RANCH, LLC vs. THE CITY OF LUBBOCK

By Manning Wolfe, Esq.

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The Texas Supreme Court ruled in favor of a Muleshoe ranch in its battle with the city of Lubbock over water rights in a 6-3 ruling in May of this year.

Issue: The accommodation doctrine, which means a lessee should regard landowners' rights when using the land for industrial purposes, has traditionally applied to oil-and-gas producers removing minerals from land, but the court determined it also applies to groundwater.

Injunction Issue: The city of Lubbock is happy with another outcome of the case, as the same court ruling stops an injunction that had kept Lubbock from accessing or developing underground water it had purchased in 1953 from prior surface owners.

Background: Coyote Lake Ranch has held a groundwater-use agreement with Lubbock since 1953. The deed allowed the 26,600-acre ranch to drill only one or two wells in each of 16 certain areas. The ranch sued Lubbock in 2012, after city staff began preparing the ground for plans to drill up to 80 new wells.

Ranch owners objected with concerns of a negative environmental impact. Ranch management testified mowing or removing vegetation to drill the wells would lead to erosion and hurt cattle grazing. They also claimed the drilling sites would create special risks for the lesser prairie chicken, a threatened species found in the area.

Lower Court: A judge in Bailey County's 287th District Court granted the ranch a temporary injunction. The order temporarily prohibited Lubbock from mowing or otherwise damaging grass on the ranch, drilling any test holes or water wells without discussing potential impact with the ranch's owners and building power lines to proposed well fields on the ranch.

Appeal: The city appealed to the Amarillo-based Seventh Court of Appeals. It claimed its deed allowed the proposed drilling, and the accommodation doctrine applies to minerals, not groundwater.

Case: O & G
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Case: O & G

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Appeals Court Ruling: The appeals court ruled in favor of the city, reversing in June 2014 the trial court's ruling. "Our research has yielded no case in which a Texas court has applied the accommodation doctrine to the groundwater context, and (Coyote Lake Ranch) has cited us to none".

Supreme Court Ruling: The Supremes affirmed the appeal court's temporary injunction reversal, but supported the ranch's claim of its groundwater rights. It cited past cases in which the accommodation doctrine was applied more broadly than to minerals, including Edwards Aquifer Authority v. Day. In that case, the court determined a landowner owns the property's groundwater in the same manner he or she owns its oil and gas.

The Coyote Lake Ranch ruling describes an important difference between water and oil and gas — water is renewable — but claims that should not be a factor in its ownership.

The court stated: "Common law rules governing mineral and groundwater estates are not merely similar; they are drawn from each other or from the same source,".

The temporary injunction, though, is unfair because it stops Lubbock from certain practices that are clearly allowed: "The temporary injunction denies the city its undisputed right to access groundwater. The temporary injunction also prohibits the city from erecting power lines, even though its deed gives it the express right to do so ... An injunction 'so broad as to enjoin a defendant from activities which are a lawful and proper exercise of his rights' is an abuse of discretion,".

Bottom Line: The Supreme Court's decision is a major victory for landowners across Texas. It was important to City representatives to point out that the City of Lubbock paid for the rights and obtained a deed with the signature of the Grantor.

Side Box:

Case Note - read the full Supreme Court Case here: <http://law.justia.com/cases/texas/supreme-court/2016/14-0572.html>

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Guest Article

ANTITRUST CLAIMS: A NOVEL LINE OF ATTACK BY GROUPS OPPOSING NATURAL GAS INFRASTRUCTURE PROJECTS

*By: John L. Longstreth, Esq., Partner, Sandra E. Safro, Esq., Partner, David L. Wochner, Esq., Practice Area Leader-Policy/Regulatory,
and Jennifer L. Bruneau, Esq., Associate, Law Firm of K&L Gates
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The Sierra Club and other environmental groups have made little secret of their opposition to the continuing use of fossil fuels, and to the development of infrastructure to support that use. A new wrinkle in their multi-front attack on fossil fuel-related projects can be seen in a series of recent filings with federal regulatory agencies asserting that two natural gas pipeline projects violate the antitrust laws. Although styled as “complaints,” the filings do not initiate an adjudicatory proceeding in the usual sense of a complaint, but rather appear to be requests for enforcement or competition advocacy actions by federal antitrust agencies. The challenged projects are joint ventures of energy utility companies and the natural gas supplied by each will serve their respective natural gas or electricity retail distribution affiliates. The claims that this structure is anticompetitive are novel and face substantial obstacles under established antitrust law.

Overview of the Antitrust Claims

The recent antitrust challenges to pipeline projects first surfaced with respect to the Atlantic Coast Pipeline (ACP) project, which includes 600 miles of new pipeline, three compressor stations, and related facilities across West Virginia, Virginia, and North Carolina. ACP is owned by subsidiaries of four utility companies, affiliates of which will purchase some of the gas supplied by the pipeline. Sierra Club argues that this structure is anticompetitive because it will stifle the development of renewable energy alternatives for use in generating electricity and limit ACP’s incentive to complete the project efficiently, thereby unnecessarily increasing costs for retail customers.

Sierra Club has also asserted an antitrust theory against the NEXUS project which involves the construction of 256 miles of new pipeline, four compressor stations, and related facilities across Pennsylvania, West Virginia, Ohio, Michigan, and Ontario. NEXUS is a joint venture between two utility companies. Sierra Club claims that one of the companies is monopolizing electricity generation because its natural gas supply will be sourced from the NEXUS project; the cost of which it can then pass on to its Michigan retail customers through its pre-existing regulated monopoly over a segment of the retail market. Sierra Club also argues that the project is anticompetitive because it is more costly than other alternatives for supplying increased energy demand.

The Theories Asserted Face Significant Challenges Under Established Antitrust Principles

The antitrust laws impose specific requirements designed to assure that claims truly assert harm to competition in a well defined market. It is not sufficient to make assertions of harm to the interests of a specific market participant; or to a policy goal unrelated to the goals of the antitrust laws to encourage free and fair competition and the generally resulting lower prices and increased output. A full antitrust analysis would exceed the bounds of this alert, but a few initial observations can be made.

First, many of the antitrust arguments Sierra Club advances are based on the assertion these pipeline projects do not make economic sense and that the utilities must therefore have some separate anticompetitive motive. However, there are numerous other pipelines under construction in the same general geographic area, as might be expected given the boom in natural gas production over the last decade. This suggests both that there is a good economic case for construction of new natural gas transportation capacity, and that control of a single pipeline would not allow its owners to control any properly defined market. Antitrust agencies and courts will not second guess reasonable



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Second, in claims such as these, antitrust complainants are required to identify some relevant antitrust market that would be monopolized as a result of activity they challenge. The complainants in the recent filings against the pipelines either do not do so, or attempt to define markets based on the activities of a single market participant, which is generally disfavored under the antitrust laws.

Finally, theories of economic harm must take account of the heavy regulation of energy markets at the state and federal level. Such regulation, for example, prohibits a utility from passing on costs to retail customers that are not prudently incurred. An antitrust theory based on a utility's asserted intention to do just that could be viewed as implausible.

Implications

Environmental organizations have shown a willingness to use every potential legal means to stop or delay natural gas development activities and other energy infrastructure projects. Such is the avowed goal of the Sierra Club's "Beyond" campaign. Antitrust represents a new line of attack in this ongoing effort. Monitoring of developments in this area, and access to sound antitrust analysis and advice in the event of a challenge, is thus necessary for market participants seeking to protect these projects.

Mr. Longstreth can be reached at johh.longstreth@klgates.com

Ms. Safro can be reached at sandr.safro@klgates.com

Mr. Wochner can be reached at david.wochner@klgates.com

Ms. Bruneau can be reached at Jennifer.bruneau@klgates.com

See, e.g., Cargill v. Montfort of Colorado, Inc., 479 U.S. 104, 109 (1986) (quoting Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc., 429 U.S. 477, 489 (1977) (holding that an antitrust plaintiff must show not just an injury caused by the challenged conduct, but an antitrust injury; i.e., an injury "of the type the antitrust laws were designed to prevent and that flows from that which makes defendants' acts unlawful."))

See, e.g., Remarks of Deborah Platt Majoras, Chairman, Federal Trade Commission, "The Consumer Reigns: Using Section 2 to Ensure a 'Competitive Kingdom'", Opening Session, Hearings on Section 2 of the Sherman Act Sponsored by the Federal Trade Commission and the Antitrust Division, U.S. Department of Justice, at 10, 12 (2006) ("any legal framework needs to avoid second-guessing business judgments that were objectively reasonable at the time that they were made," and courts and agencies must "tak[e] care to ensure not to chill procompetitive behavior."))

See, e.g., Queen City Pizza, Inc. v. Domino's Pizza, Inc., 129 F.3d 724 (3d Cir. 1997) (rejecting market of "pizza ingredients and supplies used by Domino's pizza stores")

See <http://content.sierraclub.org/naturalgas/> (describing efforts to end natural gas production and liquefied natural gas exports).

Freeport-McMoRan Completes Sale of Onshore California Properties

PHOENIX, AZ, December 30, 2016 – Freeport-McMoRan Inc. (NYSE: FCX) announced today that it has completed the previously announced sale of its onshore California properties to Sentinel Peak Resources California LLC for \$592 million in cash, before closing adjustments.

Under the terms of the agreement, FCX has the right to receive additional proceeds of \$50 million per annum in each of 2018, 2019 and 2020 if the price of Brent crude oil averages \$70 per barrel or higher in that calendar year.

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Case of the Month, Right of Way

U.S. SUPREME COURT INVALIDATES SIGN ORDINANCE

*Terence Boga, Esq., Shareholder, Law Firm of Richard Watson Gershon
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A sign ordinance has been deemed unconstitutional because, like many sign ordinances, it regulated ideological signs, political signs, and temporary directional signs differently based on content. This U.S. Supreme Court ruling will affect many local sign ordinances.

In *Reed v. Town of Gilbert*, the Court considered a First Amendment challenge to a sign ordinance that identified various categories of signs based on the information conveyed and subjected each category to special restrictions. The ordinance generally prohibited the display of outdoor signs without a permit, but it contained exemptions for 23 categories of signs. Three of the exemptions were for ideological signs, political signs, and temporary directional signs. Each category had its own set of restrictions on sign size, number, location, and display period.

The challenge was filed by a small church that does not own a building and held its services at different locations. The case arose when a town code enforcement officer twice cited the church for posting temporary directional signs that displayed the church's name along with the time and location of the upcoming service.

The Court ruled that the ordinance violated the First Amendment by imposing content-based regulations that were not narrowly-tailored to achieve the town's interests in aesthetics and traffic safety. The opinion reasoned that the strict limits on temporary directional signs were invalid because such signs are not a greater eyesore, and do not pose a greater threat to safety, than ideological or political signs.

The *Town of Gilbert* case does not preclude public agencies from regulating signs on a content-neutral basis. Indeed, the Court emphasized that aesthetic and safety concerns can be addressed by regulating sign aspects such as size, building materials, lighting, moving parts, and portability. The Court also stressed that public agencies "may go a long way toward entirely forbidding" posting of signs on public property. Thus, each public agency should review its sign ordinance to ensure that restrictions are imposed on a content-neutral basis. Many local sign ordinances contain the types of content-based categories the Court has deemed to be unconstitutional.

Mr. Boga can be reached at tboga@rwglaw.com.

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