



The Override

Every Landman Wants One!

Volume XI, Issue II

March, 2018



Presidents Message

Sarah Bobbe, CPL
President

Signal Hill Petroleum, Inc.

I came across a fascinating paper on oil and gas lease assignments which was written in 1974 by David E. Pierce, Professor of Law for the Annual NADOA Institute. While seemingly short and simple, oil and gas lease assignments are critical in ensuring the transfer of legal rights is properly assigned from assignor to assignee. This paper takes a deep dive into several potential issues surrounding assignments and is still relevant today. For example, it highlights the potential imbalance of power between the lessor and lessee. An inherent conflict exists in the lessee's right to develop with no obligation to develop. When a lease



is terminated, the rights of the non-operator or lessor generally terminate with it. Pierce explains different drafting techniques in the assignment that can be used to protect the lessor.

You can read Professor Pierces detailed analysis of how to properly evaluate and draft an oil and gas lease assignment here: <http://washburnlaw.edu/profiles/faculty/activity/fulltext/pierce-david-1992-4nadoaannualinstitute387.pdf>.

I am inspired when we hear about creative endeavors to educate the public about the benefits of oil and gas. There is a new campaign by the National Gas Association called #cookingwithgas. Celebrity chefs share the secret behind their cuisine: natural gas. The campaign will include videos from famous chefs talking about how important natural gas is in giving them a culinary advantage by allowing control of heat, etc. Follow the hashtag #cookingwithgas to see new features by chefs in California and other states. There is a recent short article in *Forbes* highlighting the disconnect between California's *Presidents Message continued on page 2*

Meeting Luncheon Speaker

A Tale of Two Gas Storage Projects



Ryan Stephensen is a civil litigation attorney with the law firm of Day Carter & Murphy LLP. His practice focuses on energy matters, land use, eminent domain, and probate matters

related to oil and gas interests. Ryan earned a his Bachelors of Science from Brigham Young University in 2002, graduating summa cum laude, and earned his Juris Doctorate degree in 2006 from the University of California, Davis, where he graduated Order of the Coif. Ryan and his wife Becka are the proud parents of four wonderful children ranging in age from 5 to 13 years old. One of Ryan's favorite pastimes is piling into the van with all the kids, without a particular destination in mind, and heading out on an adventure.

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Opinionated Corner

Joe Munsey, RPL
Director

Publications/Newsletter Co-Chair
Southern California Gas Company

Spring is in the air once again and we have made the passage into Day Light Savings Time. The body still thinks it has lost an hour of sleep but we will gain that hour back come fall.

We subscribe to Phil Flynn's daily newsletter; Phil is Senior Energy Analyst at The PRICE Futures Group and is a Fox Business Network contributor, pflynn@pricegroup.com and has made a couple of appearances in The Override this past year.

His March 5, 2018, article titled "Crude: Barrel by Barrel" discussed oil storage problems taking place. That tends well for future oil production shortages coming soon if we factor in the past several years of low CAPEX. We fired back a response and mentioned we loved oil shortages. What really should have been written, "I love the smell of oil shortages in the morning." I was not quick on the draw with our initial response. Obviously we are dating ourselves and we can hear the howls echoing for not being original. For those who have come into this oil biz at the turn of the new century or later, that line is a takeoff from Robert Duvall in the movie "Apocalypse Now."

To redeem myself, here are some original quotes from past readers of *Forbes* [Collectors' Edition] which were published in its 100th anniversary publication on September 28, 2017.

"Sir: Love and money, someone has said, are the two big interests in this world. There is need for a publication that will put a little heart interest in the subject of finance....I am glad that there is a man of your type at the head of the

new *Forbes* magazine. Isn't it great to be alive in these times?" Charles Merrill, Partner, Merrill Lynch & Co. October 13, 1917.

"Sir, I read *Forbes*. I like it. It stimulates people to work, to think and to do things to make progress in the world." Thomas A. Edison – August 7, 1920

"Sir: I just wanted you to know how much I appreciated your thoughtful and very encouraging comments about my relations with the American people (Fact and Comment, February 15). Needless to say, I hope I can continue to merit such high marks in the months and years ahead." With warmest regards. Richard M. Nixon, White House, Washington, DC – April 15, 1970

"If my estate is worth more than \$50 million, I'll kiss your ass. I mean that." Bob Hope – May 1983.

"*Forbes*, I appreciate the kind words in the article, but, judging by the picture mod[ification]s, it looks like your Photoshop bill was very high." Elon Musk – August 22, 2015.

We have a great speaker lined up for our next meeting at the Long Beach Petroleum Club, looking forward to seeing everyone there.

Scheduled LAAPL Luncheon Topics and Dates

March 15, 2018

E. Ryan Stephensen, Esq.,
Law Firm of Day Carter Murphy
"A Tale of Two Gas Storage Projects:
from Zuckerman to Southam"

May 17, 2018

Jeanne Orcutt, Executive Director,
Coastal Energy Alliance
"Family History of Oil"

Officer Elections

September 20, 2018

In Lieu of Our Luncheon Meeting
West Coast Landmen's Institute
September 26th – 28th
Paso Robles, CA

President's Message declining oil
continued from page 1 outputs and
the overwhelming demand for oil in
the state. The article says the shale
revolution has passed our state by. I
wonder if our members share this grim
outlook. We can take comfort knowing
the reserves are not going anywhere
while we overcome the hurdles of
producing them. You can read the
article here: <https://www.forbes.com/sites/judeclemente/2018/02/20/the-duplicity-of-californias-oil-collapse/#710d5b8e52b2>

I am excited to announce that this year's West Coast Land Institute will be in beautiful Paso Robles, California. If you enjoy picturesque wineries and incredible speakers, this event is not to be missed. The dates are September 26th – 28th with details to follow.

Our luncheon speaker this month is Ryan Stephensen, Esq., with Day Carter & Murphy. Mr. Stephensen will update us on a recent development in California law regarding gas storage, eminent domain, and the rule of capture. I look forward to hearing this first-hand account and hope to see all of you there on March 15th.

Chapter Board Meetings

Brandi Decker
LAAPL Secretary
California Resources Corporation

The LAAPL Board of Directors and Committee Members did not hold a board meeting in January 2018.

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



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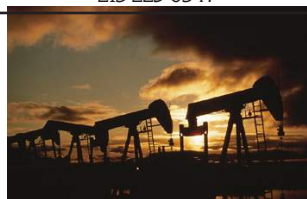
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The Override Archive

Chip Hoover, Archer Energy
Website Chair

I recently had the opportunity to acquire the complete set of all the newsletters we all know as The Override. This set dates all the way back to 2006 and includes every single issue that has made its way to your inbox. I do not have permission to give away my source, but his first name starts with an “R” and last name rhymes with sailor.

Being a member of the LAAPL since 2013, I had always enjoyed reading these newsletters, but never really knew the full history and labor of love that that goes into each publication. I was glancing back in Volume I, Issue II, when Joe Munsey first introduced Randall Taylor as our Publisher and to this day, they have both served as our Newsletter and Publisher Co-Chair for this organization. The numerous personal hours spent and the blood, sweat and tears that were put into these publications reflect what the “Award Winning” newsletter has blossomed into today. I would like to take this opportunity to thank Joe Munsey and Randall Taylor for all their hard work, dedication and continued success in publishing The Override for all our members to enjoy. I would also like to thank all the contributors that have shared their stories, knowledge and insight of the industry over the last 12 years. Without these key components The Override may have been nothing more than just a type of royalty we all wish we owned.

I am excited to announce that all of these issues of The Override are now available on the LAAPL website. (<http://www.laapl.com/laaplnewsletter>) Please take a moment to stroll down memory lane and look back at some of the highlights that helped build this successful association into an organization we are all proud to be a part of.



Treasurer's Report

Jason Downs, RPL
Treasurer
Breitburn Management Co.

As of 1/18/2018, the
LAAPL account **\$28,420.98**
showed a balance of

Deposits **\$19.16**

Total Checks,
Withdrawals, Transfers **\$835.85**

Balance as of 3/05/2018 \$27,604.25

Merrill Lynch Money
Account shows a total **\$11,096.90**

Call for Dues

Per Chapter by-laws, a Notice for Dues will be sent out to LAAPL Chapter Members. Renewal is \$40.00.

Thanks to **Chip Hoover**, our Web Master, we can now renew online, as well as, make/pay luncheon reservations.

New Members and Transfers

Allison Foster
Membership Chair
Signal Hill Petroleum, Inc.

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 to Report

Transfers

None to Report

New Member Requests

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Lawyers' Joke of the Month

Jack Quirk, Esq.
Bright and Brown

While we generally and 100% of the time receive our Lawyer's Joke of the Month from Jack Quirk, your Newsletter Chair went afoul and did not send Jack a reminder. We offer the following:

"If you think that you can think about a thing, inextricably attached to something else, without thinking of the thing it is attached to, then you have a legal mind."

--Thomas Reed Powell

"When the president does it, that means it is not illegal."

--Attorney Richard M. Nixon

Two farmers each claimed to own a certain cow. While one pulled on its head and the other pulled on its tail, the cow was milked by a lawyer.

--Jewish Parable

Our Honorable Guests

January's luncheon was a successful joint meeting with the Los Angeles Basin Geological Society and Los Angeles Association of Professional Landman held at the Grand at Willow Street Conference Center. LAAPL were the guests of honor.

West Coast Landman's Institution Locks in Date and Location

The WCLI, a joint effort of the Los Angeles Association of Professional Landmen and Bakersfield Association of Professional Landmen, is scheduled for September 26th through 28th, 2018, in Paso Robles, CA.



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Educational Corner

Blake W. E. Barton
Signal Hill Petroleum, Inc.
Education Chair

Need continuous education credit? You can generally earn them by attending our luncheons based upon speaker and subject matter. Listed below are continuous educational courses available January 2018 – March 2018 (see AAPL website for more additional information on courses)

| March 2018 | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Joint Operating Agreements Seminar Date: March 14, 2018 Where: Grand Rapids, MI Credits Approved: 7 CEU Member Price: \$300.00 | Mining and Land Resources Institute Date: March 15-16, 2018 Where: Reno, NV Credits Approved: 11 CEU, 1 CEU Ethics Member Price: \$325.00 |
| Held By Production and Royalty Issues (Webinar Available) Date: March 21, 2018 Where: Midland, TX Credits Approved: 6 CEU Member Price: \$300.00 | Field Landman Seminar Date: March 21, 2018 Where: Spring, TX Credits Approved: 3 CEU, 1 CEU Ethics Member Price: Free Note: See LAAPL website for speakers and topics. |
| April 2018 | |
| Working Interest and Net Revenue Interest Seminar (Basic and Advanced 2 Day Option) Date: April 5-6, 2018 Where: Denver, CO Credits Approved: 6 CEU Member Price: \$300.00 (one day option), \$450.00 (two day option) Note: Day one will consist of Basic instruction and examples. Day two will consist of Advanced instruction and examples. | RMMLF Federal Offshore Oil and Gas Leasing Development Date: April 10-12, 2018 Where: New Orleans, LA Credits Approved: 17 CEU, 1 CEU Ethics Member Price: \$865.00 |
| Joint Operating Agreements Seminar Date: April 17, 2018 Where: Moon Township, PA Credits Approved: 7 CEU Member Price: \$300.00 | Field Landman Seminar Date: April 19, 2018 Where: Oklahoma City, OK Credits Approved: 4 CEU Member Price: Free Note: Speakers and topics to come later. See LAAPL website for more information. |
| Held By Production and Royalty Issues (Webinar Available) Date: April 27, 2018 Where: Denver, CO Credits Approved: 6 CEU Member Price: \$300.00 | Field Landman Seminar Date: April 28, 2018 Where: Tyler, TX Credits Approved: 5 CEU, 1 CEU Ethics Member Price: Free Note: Topics to come later. See LAAPL website for more information |
| May 2018 | |
| RMMLF Drafting and Negotiating the Modern Oil and Gas Lease Date: May 3-4, 2018 Where: Denver, CO Credits Approved: 11.50 CEU, 1 CEU Ethics Member Price: \$725.00 | Joint Operating Agreements 2 Day Seminar Date: May 9-10, 2018 Where: Houston, TX Credits Approved: 14 CEU Member Price: \$450.00 |
| Field Landman Seminar: Ethics and New Mexico Legislative Update Date: May 9, 2018 Where: Durango, CO Credits Approved: 2.50 CEU, 1 CEU Ethics Member Price: Free | |

Legislative Update



by Mike Flores
Flores Strategies LLC

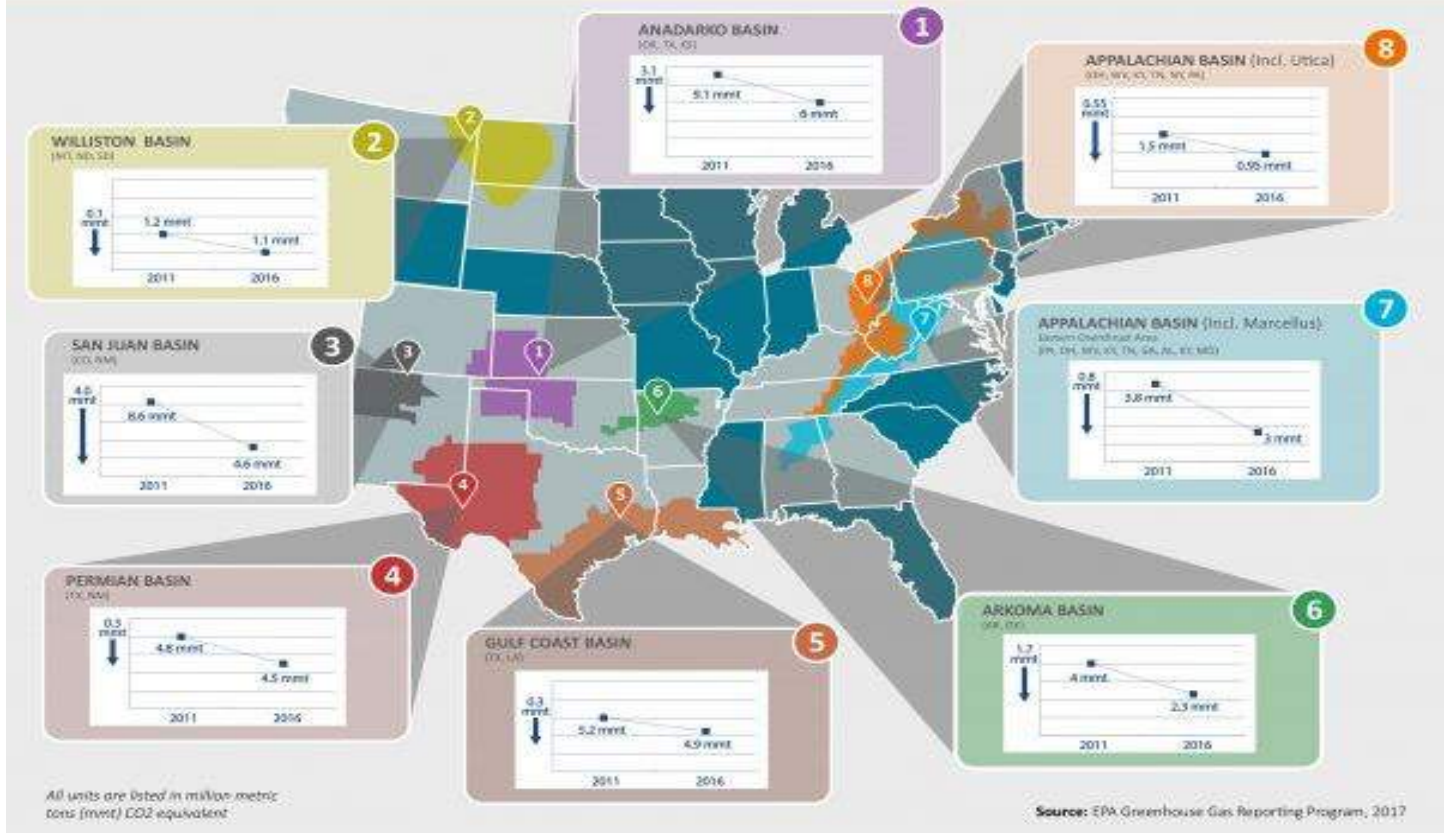
Methane Emissions Decline Nationally According to Report

A new Energy in Depth report shows that methane emissions from oil and natural gas development continue to decline in many of the top basins across the United States even as oil and gas production continues to increase.



energyindepth.org

Methane Emissions Decline in Top Oil and Gas Basins



Based on the latest data from the U.S. Environmental Protection Agency's (EPA) Greenhouse Gas Reporting Program, EID's report shows methane emissions from the most productive shale basins in the country have fallen considerably in the past six years. These reductions have been achieved even as oil and natural gas production has increased 54 percent and 16 percent, respectively, during that time thanks to advances in horizontal drilling and hydraulic fracturing technology.

Assembly Bill Would Negatively Impact Inland Empire

According to the Inland Empire Economic Partnership's recently published 2017 Economic Analysis, the region has in recent years been in the midst of a strong recovery from the effects of the Great Recession of 2008-2010. Paul Granillo, president and CEO of the Inland Empire Economic Partnership wrote in a recent letter to the editor in the San Bernardino Sun, "that recovery could be placed in serious jeopardy should the state legislature approve a bill currently under consideration in Sacramento."

Assembly Bill 1745 (Ting - D), Clean Cars Act 2040, would effectively ban light-duty internal combustion engine vehicles starting in 2040 by requiring that almost all new passenger vehicles registered in the state be "zero-emission."

"According to the state's Department of Motor Vehicles, there are over 25 million passenger vehicles registered in California. Of these, only about 230,000 — or one-hundredth of one percent — are personal electric vehicles."

"Aside from the significant investment required to purchase a new PEV as opposed to the cost of

*Legislative Update
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Legislative Update
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fixing up an aging conventional or purchasing a newer model, there is the issue of infrastructure. For residents of older homes and multi-family apartment and condominium buildings, adequate re-charging facilities are virtually non-existent. And for most drivers the time required to charge a PEV is prohibitive, especially when compared to the time needed to top off your tank at the local gas station. So on top of the new vehicle cost associated with AB1745, consumers can expect to pay higher taxes and fees to underwrite a charging network as well.”

“Finally, AB1745 fails the cost-benefit test. California accounts for less than one percent of global greenhouse gas emissions, so even if every gasoline-powered car in our state were taken off the road tomorrow there would be zero impact on climate change. Considering that California already has the country’s toughest global warming regulations, some of which have yet to be implemented, AB1745 is a symbolic mandate that citizens of the Inland Empire and elsewhere can ill-afford.”

Statement From WSPA President on AB 1745

“WSPA and its member companies oppose AB 1745, a crude and overly simplistic proposal that will hurt the majority of California families and is also likely to undermine California’s current track of success in climate leadership. “Californians need affordable and reliable transportation to commute to and perform jobs that sustain their families and build this state. Now, and for the foreseeable future, the best tool for that job are internal combustion engine vehicles. “An all zero emission vehicle (ZEV) mandate implemented by AB 1745 would come at the expense of those who can afford it the least both financially and in lifestyle – lower and middle class working families. “Our state’s climate policies should be more than symbolic or work for only small segments of our population, we should be focused on properly implementing the world-leading climate change and air quality programs already in place and supported by Californians. That’s how we maintain a strong economy, protect jobs and effectively continue California’s climate leadership.”

CARB Release Unofficial LCFS Documents

In late February the California Air Resources Board (CARB) released a draft regulatory proposal to amend the Low Carbon Fuel Standard (LCFS) and Alternative Diesel Fuel (ADF) regulations. According to the CARB, the changes are intended to strengthen the LCFS through 2030 in-line with SB 32 goals.

The draft is unofficial and is currently under review by the Office of Administrative Law (OAL). The official version that will be open for public comment and Board consideration will be the version posted on March 6, 2018 following OAL review. The official version may include modifications from the unofficial draft posted by CARB on February 20, 2018. CARB will send out a bulletin notification when the formal rulemaking documents are posted on March 6, 2018 and before the public comment period begins on March 9, 2018. Any written comment submitted prior to March 9 must be resubmitted during that public comment period in order to be included in the formal rulemaking record.

To view the document please visit the DOGGR website. <http://www.conservation.ca.gov/dog>



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Gary L. Plotner, President • glp@mavpetinc.com
BAPL President – 1985-86, 2003-04; AAPL Director – 1988-90, 2002-03, 2004-07

California Voters Divided on Proposed Initiative RE: Gas Tax

Likely voters are divided over a proposed initiative that would repeal recent increases in California’s gas tax and vehicle fees to pay for road and bridge repairs and mass transit improvements, according to the results of a survey released Wednesday.

The repeal of the gas tax is supported by 47% of likely voters and opposed by 48%, according to the statewide survey by the Public Policy Institute of California. Repeal is supported by 61% of Republican voters and 52% of independents, but by only 39% of Democrats.

The Legislature and Democratic Governor Jerry Brown approved the tax and fee increases in April. They estimate the increases will raise \$5.2 billion annually to begin whittling away at a large backlog of road and bridge repairs, and to expand mass transit.

A group backed by Republican members of Congress from California is getting close to collecting

Legislative Update
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TELL THE STATUS QUO TO WATCH ITS BACK.



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Legislative Update
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the 587,000 signatures needed to qualify a measure for the November 2018 ballot that would repeal the increase in gas taxes and require a vote of the people to raise fuel taxes in the future.

Starting November 1st, the state raised its tax on gasoline by 12 cents, from 29.7 cents a gallon to 41.7 cents a gallon. The excise tax on diesel fuel increases by 20 cents, from 16 cents a gallon to 36 cents a gallon, and the sales tax rate on diesel increases from 9% to 13%.

Beginning January 1st, the state created a new annual vehicle fee ranging from \$25 for cars valued at under \$5,000 to \$175 for cars worth \$60,000 or more. In lieu of gas taxes, electric car owners will pay a \$100 annual fee starting in 2020.

Interesting Tidbit Found on the Web on the Future of Oil

- U.S. will account for 60% of global production growth by 2023
- U.S. meets 80 percent of increase in global by 2023
- During the next five years, the United States will surrender the title of the world's biggest oil importer to China and India
- US crude oil output hit an all-time high in November, taking out the 1970 record, new data show
- “Less than four cents of every dollar of U.S. consumer spending went to gasoline, electricity and natural gas last year.”
bloomberg.com/gadfly/article

Los Angeles Oil Facts

In 2013, the Geological Survey estimated that between 1.4 billion and 5.6 billion barrels of recoverable oil remain in the Los Angeles basin’s ten largest fields alone. In fact, it described the area’s geology as “a nearly ideal petroleum system...[with] one of the highest concentrations of crude oil in the world.”



Venoco, Inc. is an independent oil and natural gas company founded in 1992. Venoco is continually recognized for practices that exceed safety and environmental compliance, thanks to the hardworking and experienced employees.



CONTACTS

Patrick T. Moran: RPL, Senior Land Negotiator
 Sharon Logan: CPL, Senior Landman

www.venocoinc.com

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Case of the Month - Oil & Gas

California's Economic Loss Rule Precludes Negligence Claims of Businesses Seeking Economic Damages in the Southern California Gas Leak Litigation

By: John J. Harris, Esq., Partner, Jon. L Rewinski, Esq., Partner, F. Phillip Hosp, Esq., Associate
Law Firm of Locke Lord LLP

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On December 15, 2017, a California appellate court held in *Southern California Gas Co. v. Superior Court*, 18 Cal. App. 5th 581 (2017), that Southern California Gas Company (“SoCalGas”) did not owe a duty to prevent economic losses to local businesses based on alleged negligent conduct related to the leak of natural gas from its Aliso Canyon Storage Facility. The ruling reinforces California’s “economic loss rule,” which bars plaintiffs from recovering pure economic losses under a negligence theory without personal injury, property damage or a special relationship. It should have a significant impact on the type of claims that could be asserted against the operators of oil and gas production, transportation and storage facilities.

In *Southern California Gas Co.*, seven businesses filed a putative class action against SoCalGas, asserting negligence based claims on behalf of themselves and other businesses located within a five-mile radius of the Aliso Canyon gas leak. The business plaintiffs did not allege any property damage or personal injury. Instead, they alleged that the gas leak and subsequent relocation of residents of the surrounding area caused purely economic injuries to their businesses. Put differently, the business plaintiffs alleged that they suffered a decline in commercial activity because neighborhood residents temporarily relocated after the gas leak.

The trial court overruled SoCalGas’s demurrer, concluding that SoCalGas owed a duty of care to the businesses and that the economic loss rule did not apply to bar the negligence-based claims (SoCalGas did not challenge the business plaintiffs’ cause of action for alleged violations of California’s Unfair Competition Law). The trial court concluded in part: “The economic loss rule thus does not apply in a context like this one: a classic mass tort action where high transactions costs precluded transactions, where the risk of harm was foreseeable and was closely connected with [SoCalGas’s] conduct, where damages were not wholly speculative, and where the injury was not part of the plaintiff’s ordinary business risk.” *Id.* at *2.

The California Court of Appeal disagreed with the trial court’s reasoning and held that the business plaintiffs’ negligence claims were not viable. Relying on the California Supreme Court’s prior holding in *J’Aire Corp. v. Gregory*, 24 Cal. 3d 799, 804 (1979), the Court of Appeal stated: “[A] third party’s purely economic loss arising from a transaction is a prerequisite for recovery in tort, absent injury to person or property.” *Southern California Gas Co.*, 2017 WL 6398546 at *7.

In its decision, the Court of Appeal analyzed and distinguished several appellate opinions involving plaintiffs who sought purely economic losses. The “common element” in those cases was the “physical destruction of the property which enabled [plaintiffs] to earn a livelihood.” *Id.* at *9; see also *George A. Hormel & Co. v. Maez*, 92 Cal. App. 3d 963, 966 (1979) (power surge burned out a motor for critical machinery in the plaintiff’s nearby facility); *Adams v. S. Pac. Transportation Co.*, 50 Cal. App. 3d 37, 40 (1975) (physical destruction of plant at which plaintiffs worked), disapproved of by *J’Aire Corp.*, 24 Cal. 3d 799; *Union Oil Co. v. Oppen*, 501 F.2d 558, 560 (9th Cir. 1974) (destruction of sea life, upon which the commercial fishermen depended for their livelihoods). That element was not present in the allegations against SoCalGas.

In addition, although the Court of Appeal reaffirmed that an exception to the economic loss rule may exist under the test set forth in *Biakanja v. Irving*, 49 Cal. 2d 647, 650 (1958), the court also recognized “that foreseeability alone may not be enough to permit recovery on a negligence theory if the imposition of liability would be ‘out of proportion to fault or [would] promote virtually unlimited responsibility for intangible injury.’” *Southern California Gas Co.*, 2017 WL 6398546 at *9 (citing *Bily v. Arthur Young & Co.*, 3 Cal. 4th 370, 398 (1992)).

Given the notoriety surrounding the Aliso Canyon gas leak and its wide ranging impact on the residents and businesses of the area, the Southern California Gas Co. decision is a strong endorsement of the

Case of the Month &G
continued on page 14



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Legislative Update
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economic loss rule in the context of mass tort litigation. Although the decision may not affect claims by residents who suffered actual personal injuries or property owners for physical damage to their property resulting from a leak at a gas storage facility, or, for that matter, a spill or other discharge of a pollutant from an oil and gas production, transportation or storage facility, the affirmation in Southern California Gas Co. of the bar on the recovery of solely economic damages should limit the scope of potential negligence claims by persons and businesses whose only injury resulting from a leak or spill was economic, such as lost revenues or a decrease in property value.

The attorneys of Locke Lord's Business Litigation & Dispute Resolution Practice Group are well positioned to answer any questions that you may have about the scope and impact of the Court of Appeal's ruling as well as related issues.

Mr. Harris can be reached at jharris@lockelord.com

Mr. Rewinski can be reached at jrewinski@lockelord.com

Mr. Hosp can be reached at phosp@lockelord.com



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Case of the Month - Right of Way



A GOVERNMENT ATTORNEY (AND CONDEMNING AGENCY) HAS AN ETHICAL DUTY TO SEEK IMPARTIAL JUSTICE IN A CONDEMNATION CASE AND IT IS MISCONDUCT TO DO OTHERWISE

By Michael Rubin, Esq., Partner, Rutan & Tucker, LLP

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A Classic Case Reported for Chapter 67, IRWA January 9, 2018 Luncheon Meeting

City of Los Angeles v Decker 18 Cal 3d 860 (1977)

There is a famous passage in the Bible: "Justice, justice shall you pursue" (Deuteronomy 16:20). This was part and parcel of the Divine Authority's plan to structure an ideal society; it follows lines that state "You shall not judge unfairly, you shall show no partiality ..." (Deuteronomy 16:19).

It turns out that our State's supreme authority (the California Supreme Court) has commanded condemning agencies and their attorneys to do likewise when wielding the awesome power of eminent domain. This instruction was plainly set forth by our state Supreme Court in a landmark case back in 1977. In the words of the Court:

Occupying a position analogous to a public prosecutor, he is 'possessed ... of important governmental powers that are pledged to the accomplishment of one objective only, that of impartial justice.'

The duty of a government attorney in an eminent domain action, which has been characterized as a 'sober inquiry into values, designed to strike a just balance between the economic interests of the public and those of the landowner' ... is of high order.

Noting that every lawyer has duties not to mislead the court by artifice or falsity, the Court went on to caution:

a government lawyer may even be under an even higher duty. ... 'A government lawyer in a civil action ... has the responsibility to seek justice and to develop a full and fair record, and he should not use his position or the economic power of the government to harass parties or to bring about unjust settlements or results.

While the government in a condemnation action acts in court through its lawyer representatives, the Court made it clear that these duties stem from the condemning agency's own special relationship to the condemnee property owner, stating:

The condemnor acts in a quasi-judicial capacity and should be encouraged to exercise his tremendous power fairly, equitably and with a deep understanding of theory and practice of just compensation.

What caused the California Supreme Court to lecture condemning agencies and their attorneys so didactically? The case arose out a condemnation by the City of Los Angeles to expand the LAX airport. The City condemned a property with a residence on it and appraised the property based upon the residential use. The property owner's appraiser, not surprisingly, had a much higher value, basing the higher value upon the theory that the highest and best use of the property was for private parking to serve the LAX airport. The City's lawyer, in closing arguments, made two arguments why the property's highest and best use was the existing residential use. First, he argued that there was no reasonable probability that the owner could get the property rezoned for commercial or parking purposes because (1) it was a small parcel, (2) the City would not rezone property in the area for commercial purposes unless the entire block were to be put to such purposes, and (3) accomplishing this would require a very difficult assemblage of multiple properties that would make such an effort financially and practically infeasible. There was actually nothing wrong with so arguing, and if the attorney had left it at this, we probably would never talk about the *Decker* case.

The attorney, however, made a second argument. He asserted that there was no need for any additional parking for LAX, and there would not be such need for more than ten years. The attorney was persuasive and the jury ruled in favor of the City's valuation based upon the residential highest and best use.

Shortly after trial, the property owner's attorney learned that less than [Case of the Month R/W](#)
[continued on page 18](#)



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three weeks after judgment was entered, the Board of Airport Commissioners had approved a final EIR recommending a parking facility of 4,000 spaces in the area that included the condemned residential parcel. As indicated by the Court, “it was clear that the city knew, and for some time had known, that there was an acute need for airport parking and that the subject properties were suitable for that purpose.” The need was not only a result of the proposed expansion of the airport (which was the public purpose for the condemnation) but was due to existing airport requirements.

When the property owner’s attorney learned these facts, he made a motion to the trial court seeking a new trial based upon the alleged misconduct of the condemning agency and its attorney. The trial court denied the motion, based upon its view that the misleading arguments really didn’t matter because there was no way that the property would have been rezoned for commercial use given its small size. The property owner appealed all the way to the State Supreme Court which reversed the trial court and issued its moral instructions to condemning agencies and their attorneys.

As an explanatory note, it should be understood that under existing law, a condemnee cannot value his/her property based upon the use to which it will be put by the condemning entity, but that rule only applies if a private property owner does not have the ability to independently put the property to such use absent the public project. In *Decker*, the private property owner didn’t need the project to use his parcel for airport parking purposes, providing that the City rezoned the property. Arguing to the jury that there was no need for additional parking misled the jury and constituted misconduct, justifying the granting of a new trial.

TAKE AWAYS: While the State Supreme Court’s ruling and stinging criticism was directed at a government attorney in the *Decker* case, the same guidelines would logically also apply to Right of Way professionals that work for condemning agencies. Playing fast & loose with the truth and other deceptive tactics may be simply a matter of “buyer beware” or “puffing” in run of the mill real estate transactions, but when property is acquired under threat of eminent domain, the rules are different, and representatives of the government must not engage in deceptive or oppressive tactics to get a deal.

Mr. Rubin can be contacted at mrubin@rutan.com.



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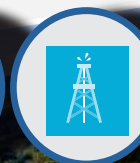
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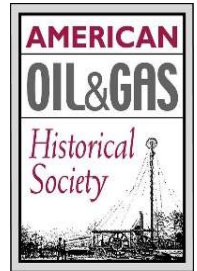
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Halliburton Cements Wells



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Article from American Oil & Gas Historical Society Website

AOGHS.org. Updated March 2018



An unidentified Halliburton company employee in this circa 1920s photograph posed confidently in a Model T Ford. Background includes an early Halliburton self-propelled truck with pumps for cementing wells. Photo courtesy Timothy Johnson.

Erle P. Halliburton received a 1921 patent for an improved method for cementing oil wells, helping to bring greater production and environmental safety to America's oilfields. When he patented his "Method and Means for Cementing Oil Wells," the young inventor revolutionized how wells were completed after drilling.

Erle Halliburton's well cementing process isolated down-hole production zones, prevented collapse of the casing – and helped secure the well throughout its producing life.

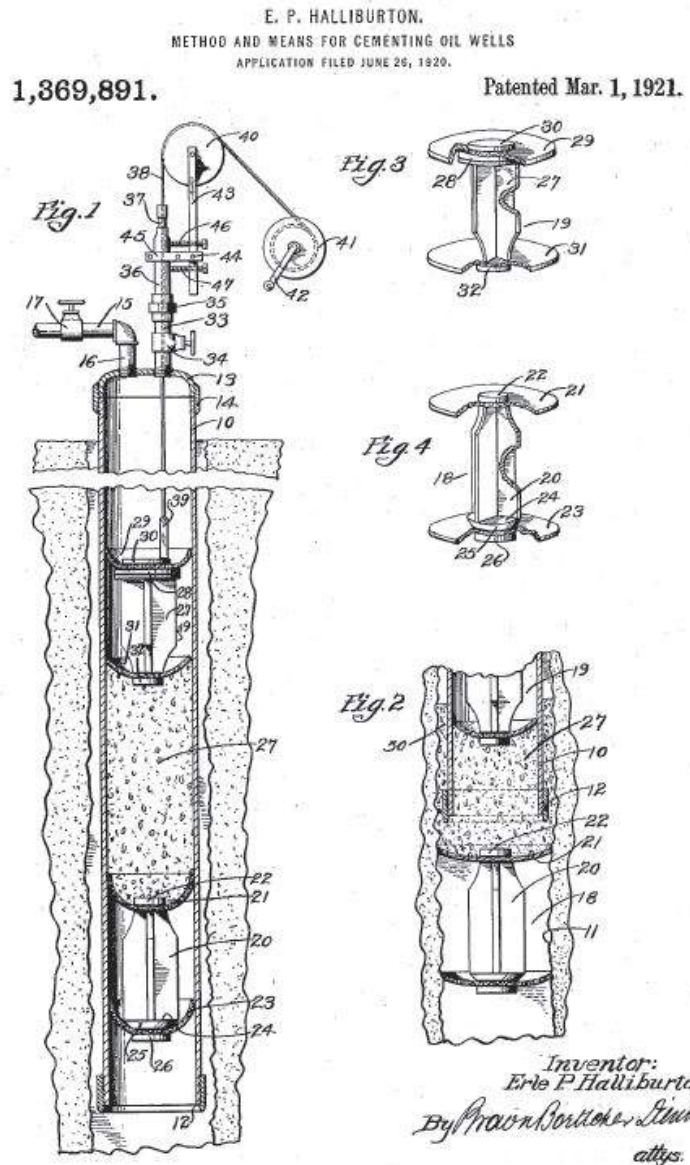
In 1919, Halliburton was 27 years old when he founded his oilfield equipment and service company headquartered in Ardmore, Oklahoma. The New Method Oil Well Cementing Company would receive many patents on its way to becoming today's Halliburton. He had recently moved to Ardmore and the nearby Healdton oilfield after working in the booming fields of Burkburnett, Texas.

After working in Burkburnett, Texas, in 1919, Erle Halliburton had moved to the booming Healdton oilfield near Ardmore, where he established the New Method Oil Well Cementing Company.

"It is well known to those skilled in the art of oil well drilling that one of the greatest obstacles to successful development of oil bearing sands has been the encountering of liquid mud water and the like during and after the process of drilling the wells,"

Halliburton notes in his June 26, 1920, patent application.

Halliburton's patent (No. 1,369,891, approved on March 1, 1921) explained that oil well production, hampered by water intrusion that requires time and expense for pumping out, "has caused the abandonment of many wells which would have developed a profitable output."



A statue dedicated in 1993 in Duncan, Oklahoma.

His well cementing process isolated the various down-hole zones, guarded against collapse of the casing and allowed better control of the well throughout its producing life. (Learn more about well production in “All Pumped Up – Oilfield Technology” at aoghs.org).

Inventing a Service Company

In 1919, as Halliburton struggled to set up cementing operations in Texas – most petroleum companies were skeptical of cementing casing, says the former editor-in-chief of *E&P* magazine. “Most wells were doing well, they reasoned, without the new-fangled technology and there was, in the back of their minds, the question of possible well damage resulting from cementing,” explains Bill Pike. “For Halliburton, it was to be an uphill struggle to normalize the practice of cementing a well,” he adds.

Halliburton will patent much of today’s cementing technology – including the jet mixer, the remixer and the float collar, guide shoe and plug system, bulk cementing, multiple-stage cementing, advanced pump technology and offshore cementing technology.



Guest Article - Halliburton Cements Wells - continued

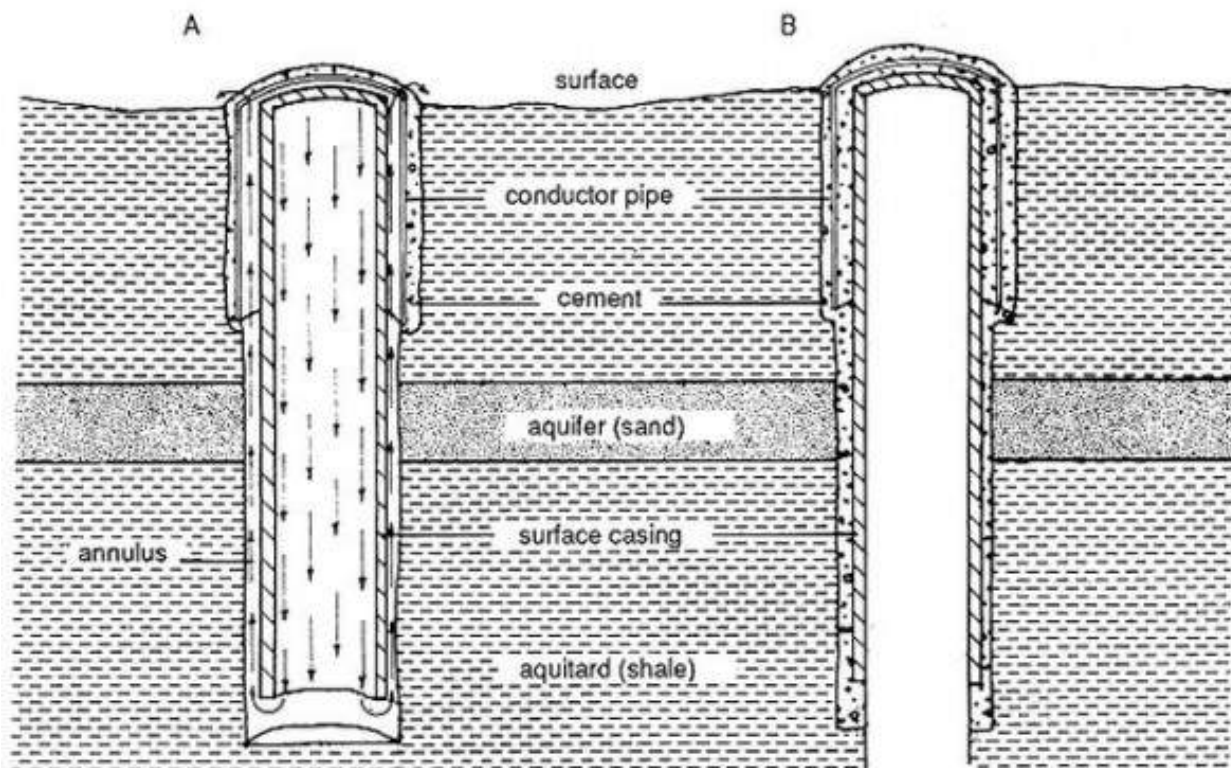
One of the earliest self-propelled Halliburton cementing trucks includes a jet mixer at the rear of the truck on the left. Halliburton photo courtesy E&P magazine.

“It is safe to say that in the first half of the 20th century, the formative years, Halliburton dominated the development of cementing technology,” Pike proclaims. His article, “Cementing is not for Sissies,” also notes: “Halliburton was ever the tinkerer. He owned nearly 50 patents. Most are oilfield, and specifically cementing related, but the number includes patents for an airplane control, an opposed piston pump, a respirator, an airplane tire and a metallic suitcase.”

For years Halliburton’s biggest competitor in the oilfield service industry was [R.C. \(Carl\) Baker](#) of Coalinga, California. Baker Oil Tools also held around 50 patents, including a Gas Trap for Oil Wells in 1908, a Pump-Plunger in 1914, and a Shoe Guide for Well Casings in 1920.

About three decades after his 1921 Method and Means for Cementing Oil Wells patent, Halliburton would develop another revolutionary oilfield technology. On March 17, 1949, the Halliburton Oil Well Cementing Company and Stanolind Oil Company completed a well near Duncan, Oklahoma – the first commercial application of hydraulic fracturing, a process that dramatically increased oil and natural gas production.

Casing a Well



Steel casing is installed in the surface hole to prevent the contamination of freshwater zones. (A) The conductor pipe has been cemented into place. Cement is pumped down the inside of the casing. (B) The cement in the bottom of the casing has been drilled out so that drilling can be resumed. Illustration courtesy the Kansas Geological Survey.

Today, cement is first used soon after a well has been spudded – the beginning of drilling operations. The surface hole is lined with steel casing and cement to protect freshwater aquifers.

A 1939 issue of "The Cementer," a Halliburton Oil Well Cementing Company magazine.

According to the Kansas Geological Survey (KGS), this surface hole may be several hundred or several thousand feet deep. When the predetermined depth is reached, drilling pauses so steel casing can be inserted.

To strengthen the well and protect the environment, cement is then pumped down the surface casing to fill the space between the outside of the casing and the well bore all the way to the surface. This insures the protection of freshwater aquifers and the security of the surface casing.

KGS notes that the casing and the cement typically are tested under pressure for 12 hours before drilling operations resume. A vital piece of equipment for controlling pressure – the blowout preventer – is attached at the top of the surface casing.

Cementing a Well

When drilling has reached total depth and after well-logging and other tests have been completed and analyzed, petroleum company executives must decide whether to complete the well as a producing well – or plug it as a dry hole.

The KGS explains that if the well is to be plugged and abandoned as a dry hole, the well bore is filled with a drilling fluid with additives that prevent its movement from the well bore into the surrounding rock.

Several cement plugs can be used within the well bore at intervals where porosity has been detected, KGS adds. This isolates the porosity zones – and prevents movement of fluids from one formation to another.

If a decision is made to complete the well as a producer, more casing is delivered to the site and the cementing company called.

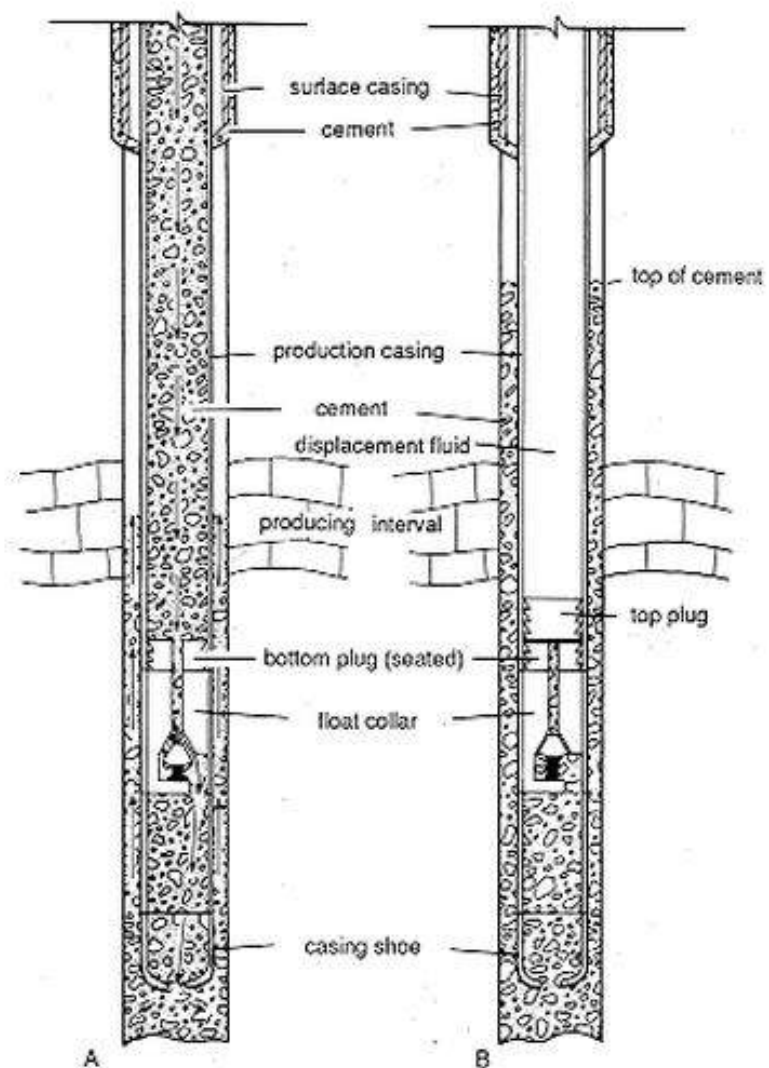


“The well bore is filled with drilling fluid that contains additives to prevent corrosion of the casing and to prevent the movement of the fluid from the well bore into the surrounding rock,” notes KGS.

Casing may be inserted to a total depth of the hole or a cement plug may have been set at a specific depth and the casing set on top of it.”

The cement is then pumped down the casing and displaced out of the bottom with drilling fluid. The cement then flows up and around the casing, filling the space between the casing and the well bore.

Special tools are sometimes used with the casing which allow the setting of cement between the outside of the casing and the well bore at specific intervals. This is done to protect the casing and to prevent the movement of formation fluids from one formation to another.



(A) The casing shoe makes it easier to insert the casing into the bore hole. The float collar prevents drilling fluid from entering the casing. The bottom plug precedes the cement down the casing, and the top plug follows the cement. (B) The production casing when the cementing operation is completed. Kansas Geological Survey illustration.

“After the cementing of the casing has been completed, the drilling rig, equipment, and materials are removed from the drill site,” says KGS. “A smaller rig, known as a workover rig or completion rig, is moved over the well bore. The smaller rig is used for the remaining completion operations.”

A well-perforating company is then called to the well site, adds the KGS article, because it is necessary to perforate holes in the casing at the proper position to allow the oil and natural gas to enter the casing (learn more in “Downhole Bazooka” at aoghs.org).

MANNING WOLFE

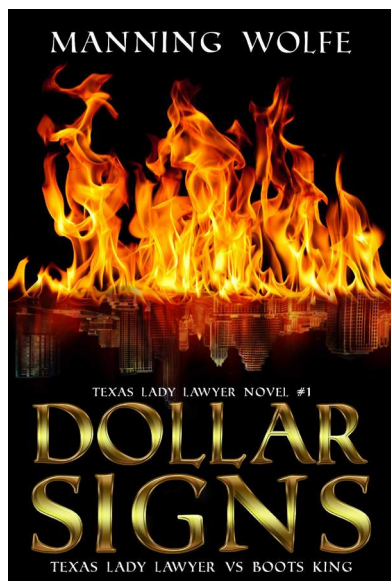
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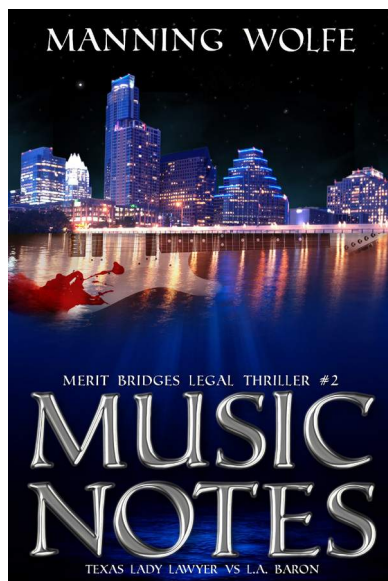
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Description

In Book #1, attorney Merit Bridges represents a desperate client who takes a shortcut to justice and is charged with arson and murder. When Merit tries to set things right, she finds herself the target of a ruthless hired gun, Boots King, whose charge is simple: "Stop her." With the help of her team – including Betty, a mothering office manager with a bad-ass attitude – Merit struggles to stay alive, navigate a labyrinth of legal issues, and prove once again that you don't mess with a Texas lady lawyer.

In Book #2, Attorney Merit Bridges finds herself in danger again in Music Notes: Texas Lady Lawyer vs L.A. Baron. When client Liam Nolan is slain with his own guitar, Davey Ray Bell shows up claiming to be Nolan's illegitimate son. L.A. Baron, Nolan's former manager, makes a back-door music deal and tries to grab the estate for himself. When the probate court pushes Baron out of the power position, he pursues Merit with a vengeance. Using the dark web, he ruins her reputation, destroys her career, and finally attempts to take her life. Who will come out on top of the scales of music and the scales of justice?

About the Author

MANNING WOLFE an Author and attorney residing in Austin, Texas, writes cinematic-style, smart, fast-paced thrillers with a salting of Texas bullshit. The first in her series, featuring Austin Lawyer Merit Bridges, is *Dollar Signs: Texas Lady Lawyer vs Boots King*.



A graduate of Rice University and the University of Texas School of Law, Manning's experience has given her a voyeur's peek into some shady characters' lives and a front row seat to watch the good people who stand against them.

Praise

A legal thriller not to be missed...Manning Wolfe just put herself on my list of must-read authors.

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Move over, John Grisham. There's a lady lawyer in town..

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FAQ Affordable Housing Recording Fee

Q1: What is the new the new Affordable Housing Recording Fee?

A: The new fee is an additional charge passed by the legislature and signed by the governor to fund Affordable Housing. The fee is assessed at the time documents are recorded into the public record with the county recorder's office.

Q2: Does the new Recording Fee replace previous charges for recording?

A: No, the new Recording Fee is charged in addition to previous recording charges collected by county recorders.

Q3: When does the new recording fee become due?

A: The recording fee becomes due at the time an instrument is recorded with the county recorder's office that is not otherwise exempt.

Q4: Is the Affordable Housing Recording Fee charged on all documents presented for recording?

A: No, the Affordable Housing Recording Fee is charged on real estate instruments, papers or notices permitted by law to be recorded.

Q5: What is considered a "real estate instrument, paper or notice"?

A: The new legislation defines this as a document relating to real property and includes the following as examples: deed, grant deed, trustee's deed, deed of trust, reconveyance, quit claim deed, fictitious deed of trust, assignment of deed of trust, request for notice of default, abstract of judgment, subordination agreement, declaration of homestead, abandonment of homestead, notice of default, release or discharge, easement, notice of trustee sale, notice of completion, UCC financing statement, mechanic's lien, maps, and covenants conditions and restrictions.

Q6: What is the amount of the assessment?

A: The additional fee is \$75.00 per instrument, per each single transaction per parcel of real property.

Q7: What is considered a "Single Transaction"?

A: The development for future construction, sale and/or encumbrance of a piece of real property.

Q8: What is considered a "Parcel of Real Property"?

A: The recorders have currently determined a parcel is defined, for the purposes of interpretation of new Government Code 27388.1, as "a piece of land of any size that is in one ownership." Thus, recorders are expected to treat a parcel as a transaction -if there are 3 parcels in one single document subject to the additional fee, it would be \$75, not \$225.

Q9: Is there a maximum aggregate charge per transaction?

A: Yes, the maximum aggregate charge for real estate instruments recorded in a single transaction is \$225.00

Q10: How will a county recorder determine the maximum has been paid, such that additional instruments recorded in connection with a single transaction are not charged an additional recording fee?

A: The individual or entity recording documents after the maximum Affordable Housing Recording Fee has been met will have to indicate by stamp physically placed on the document declaring the maximum fee has been met.

Example: Recorded at the Request of:
Commonwealth Land Title Company
Exempt from fee per GC 27388.1 (a) (1); fee cap of \$225 reached

Q11: Are any real estate instruments exempt from the Affordable Housing Recording Fee?

A: Yes, the following real estate instruments, papers or notices are exempt from the additional Affordable Housing Recording Fee:

- Those recorded in connection with a transfer subject to a documentary transfer tax; or
- Those recorded in connection with a transfer of real property that is a residential dwelling to an owner-occupier.

Q12: What real estate instruments, papers or notices will be considered recorded "in connection with" a transfer subject to a documentary transfer tax?

A: Recordors have currently determined "In connection with" will be interpreted to mean documents involving the same parties and/or same property that are recorded concurrently. Thus, documents recorded before or after, and not concurrently, will not benefit from an "in connection with" exemption and will be charged the \$75 fee, each to the \$225 concurrently recorded cap, unless otherwise exempt.

Q13: If a title company is recording a Deed of Trust and Assignment of Rents subject to the new Recording Fee charge, will the charge be \$75 per document title?

A: Documents with multiple titles will be charged per title.

Example: Substitution of Trustee and Full Reconveyance. The charge would be \$75 x 2 titles = \$150.

Another Example: Assignment, Substitution of Trustee, Reconveyance Agreement (4 titles) would be charged the maximum \$225.

Continue...



FAQ Affordable Housing Recording Fee

Q14: What real estate instruments, papers or notices will be considered recorded "in connection with" a transfer of real property that is a residential dwelling to an owner-occupier?

A: All instruments necessary to transfer ownership, relinquish debt and secure new debt recorded in a single transaction will be considered to be in connection with an exempt transfer, if the buyer declares on the Preliminary Change of Ownership (PCOR) they intend to occupy the subject property.

Note: An entity such as a trust, partnership, corporation or limited liability company are not eligible to sign such a declaration and therefore their transfer, not subject to documentary transfer tax will not be exempt from charge for the Affordable Housing Recording Fee. However, a transaction involving a deed out of a trust would be considered exempt, if the grantees are owner occupiers.

Q15: For a real estate instrument paper or notice to be considered recorded "in connection with" a transfer of real property that is a residential dwelling to an owner-occupier, must such document(s) be recorded concurrently with the document transferring a residential dwelling to an owner-occupier?

A: Yes, "in connection with" will be interpreted to mean documents involving the same parties and/or same property that are recorded concurrently. Thus, documents recorded before or after, and not concurrently, will not benefit from an "in connection with" exemption and will be charged the \$75 fee, each to the \$225 concurrently recorded cap, unless otherwise exempt.

All documents recorded will have to be stamped indicating they are part of an exempt transaction.

Example:

Recorded at the Request of:
Commonwealth Land Title Company
Exempt from fee per GC 27388.1 (a) (2); recorded concurrently in connection with a transfer of real property that is a residential dwelling to an owner-occupier

Q16: If recording a subdivision map describing multiple lots in a subdivision, is an Affordable Housing Recording Fee due equal to (a) the number of lots in the subdivision times \$75, limited by the maximum assessment or (b) the number of lots in the subdivision times \$75?

A: One \$75 fee would be charged for a single transaction regardless of the number of parcels.

Q17: If, in addition to a subdivision map, a person simultaneously presents covenants conditions and restrictions (CCRs) on the same property, is an additional Affordable Housing Recording Fee due equal to the number of lots in the subdivision times \$75, limited by the Recording Fee maximum?

A: An additional \$75 Affordable Housing Recording Fee would be due to record the CCRs.

Q18: Are documents re-recorded for reasons such as correcting a name or attaching a legal description subject to an Affordable Housing Recording Fee charge?

A: No, previously recorded documents being re-recorded to correct a previous omission or error are not subject to an Affordable Housing Recording Fee charge.

Q19: Are reconveyance and release documents recorded to release encumbrances paid prior to January 1st, 2018 subject to the Affordable Housing Recording Fee charge?

A: Yes, documents recorded after January 1st, 2018 related to transactions closed prior to that date will be charged the \$75 Affordable Housing Recording Fee, regardless if the overall transaction was otherwise exempt.

