The Override

Every Landman Wants One!

Volume XII, Issue I | January, 2019

Presidents Message

President
Mike Flores
Championship Strategies, Inc

HAPPY NEW YEAR EVERYONE!

Can you believe that 2019 is already upon us? It's a funny thing, as we grow older, for me anyway, time just seems to fly by at supersonic speed. I also think part of this is that I remember less today than I did 10 years ago; so memories and time fade away. What was I writing about? Oh yeah, 2019.

As we look at 2019, we can certainly predict we will have challenges. The oil & gas industry continues to be attacked from all sides. The depth of mis-information promoted by the "Keep it in the Ground" movements is beyond belief. And sadly, a by-product of their campaign is Sacramento has made California, the state with arguably the most oil reserves in the USA, if not the world, the most difficult place to make a living in our industry.

I want to share with you what the future looks like as mandated by law. In September of last year, SB 100, which will require California to obtain 100 % of its power from carbon-free sources, was passed and signed into law this past September.

As to the time table, here are the markers:

- 50 percent renewables by 2026
- 60 percent renewables by 2030
- 100 percent carbon-free energy by 2045

This timetable for compliance actually bumps up what was mandated by SB 350, which passed in 2015, and set a target of 50% renewable by 2030; SB 100 moves the new standard from 50% to 60% by the year 2030.

In taking a deeper look at the new timeline for compliance, it is beyond the year 2030 that things get interesting, by 2045, a mere 26 years from now, ALL ENERGY MUST BE FROM "zero-carbon resources." Renewables including geothermal and some bio-mass would no longer be permitted. Other prohibited energy sources include large hydro, nuclear power, or

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Meeting Luncheon Speaker

Eric Campbell, President, LA Seismic, LLC, will be presenting the seismic project his company recently completed, including the permitting process involving the various private parties and multiple agencies involved to shoot the line.

He will be summarizing the use of the seismic data acquired along the Newport-Inglewood Fault in the Seal Beach and Long Beach region for both public and private purposes.

Opinionated Corner

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

Happy New Year! Welcome back from the holidays – assuming all have shaken off the lethargic fog of making too much merry during the holidays. May all prospects produce hydrocarbons in paying quantities.

Recently, former California Governor Arnold Schwarzenegger attended a United Nations climate change conference in Poland. In his speech, the actor explaining if technology had been used instead of fossil fuel, the planet would not be in such dire straits. He even referred to fossil fuel as evil. He further mentioned he would love to travel back in time like the cyborg he played in The Terminator so that he could prevent fossil fuel from being used.

Wonder how that would work out considering the amazing conveniences fossil fuels has provided our current world in which we all live. Taking into consideration all the developed nations, the developing nations and even third world countries, how far back in time would Arnold have to travel?

Let's see, he approaches Noah during the construction of the ark and overpowers him as Noah is hauling up the first barrel of pitch (pitch being a petroleum product) to assure the ark is sealed from water intrusion. Or, if you prefer, the Gilgamesh story and the captain who built that boat. Either dude could have been terminated and all would have been fine since nobody would have been left after the flood. Well, except for the Arnold the Terminator.

Let's see, Arnold approaches the local native Americans in Santa Barbara, before it was Santa Barbara, and prevents the tribe using the asphaltum oozing up in the La Goleta Rancho for sealing the canoes to prevent sinking, before there was a La Goleta Rancho. At the same time, he runs off the Spanish Conquistadors from the continent and transports the entire gang of thugs back to Spain.

Let's see, the whaling industry is perplexed due to the low birth rate amongst the whales. Hunting for whale blubber is getting seriously difficult. The timber barons are mapping out strategies for the industry to survive beyond 2019. Guess the whales will go extinct and the clear cutting of the world's forest, including rain forest [God forbid], because the Terminator threatened Colonel Drake to stay away from Titusville, PA. Arnold, as an actor playing a cyborg, headed up to Petrolia, Ontario, to destroy the infant oil industry's original rough necks and experts who would end up being sent the world over to jump start the oil and gas industry.

Let's see, maybe Arnold the actor really thought about it and knew Poland was credited with the first "commercial" oil well back in 1854, preceding Colonel Drake and Petrolia, Ontario, and the building of the first oil refinery in 1856. The Terminator was in Poland to admonish the Poles.

Let's see, coal….no, way too much conjecture to conject.

The only conclusion we probably can come up with for the actor to really succeed in preempting the entire fossil fuel industry before it could get started would be for the T-1000 to have been around during, what, the Devonian, Silurian, Ordovician Ages just to make sure the stuff was not even made.

Look forward to seeing everyone at the joint LAAPL and LABGS luncheon where Eric Campbell will discuss new seismic data recently shot affecting the Newport Inglewood Faults; perhaps holding out the promise of additional oil and gas reserves the cyborg neglected to terminate.

President's Message
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natural gas with carbon capture and storage (CCS). **Simply put, no energy coming from coal, oil, or natural gas will be permitted by 2045**. How is this going to happen when we have little infrastructure presently in place to support this law? This is a reckless endeavor that will no doubt fall flat on its face. Well, that is another issue I will address in a future column. But let me say this today, the cost for compliance will be at least double what is projected.

And so how do we respond? We have to communicate with our family, our neighbors and our elected officials. Oil and gas are resources which make everyone's life better; not only that, we are drilling, pumping and exporting oil and gas with the greatest safeguards anywhere in the world. There is a place for both types of energy, and utilized together, our society will benefit beyond our wildest dreams.

I will end with my motto for the year, I am going to MAKE 2019 MY BEST YEAR EVER! My wish for everyone is this also comes true for you.

Early Bird Reminder for LAAPL Annual Dues

Jason Downs, RPL, Chapter Treasurer, will be calling for dues late Spring; which will be due by June 2018 for the 2018 – 2019 year. Cost: still a bargain at a mere $40.00.

AAPL Director's Report

A report on the latest Dirctor's Meeting held in Lost Pines, Texas will be distributed to the membership when the minutes become available.

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Warren E&P, Inc.
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Sarah Bobbe, CPL
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Jason Downs, RPL
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Region VIII AAPL Director
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Joe Munsey, RPL, Co-Chair
Randall Taylor, RPL, Co-Chair

Communications/Website Chair
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Allison Foster
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Legislative Affairs Chair
Mike Flores
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310-746-4425

Golf Chair
Jason Downs, RPL
Chevron Pipeline & Power
858-699-3353

Nominations Chair
To be determined

Chapter Board Meetings

Marcia Carlisle
The Termo Company
LAAPL Secretary

The LAAPL Board of Directors and Committee Members did not hold their regular meeting on Thursday, November 15, 2018, as some members were attending the AAPL Education Seminar that afternoon.

However, we encourage all members to attend any upcoming LAAPL Board Meetings which are typically held in the same room as the luncheon immediately after the meetings are adjourned.

Scheduled LAAPL Luncheon Topics and Dates

January 24, 2019
[4TH Thursday]
Annual Joint Meeting with
Los Angeles Basin Geological Society
Eric Campbell, President, LA Seismic, LLC,
Topic: "Seismic Data Along Newport-Inglewood Fault"

March 21, 2019

Speaker: **Uduak Ntuk**
City of Los Angeles Petroleum Administration
Topic: Historical Lease Agreements

May 16, 2019

Speaker: **Ronald Stein**
Founder and Ambassador for Energy & Infrastructure at PTS Advance
Topic: Is California becoming a National Security Risk to the U.S. and Inflationary Challenge to California businesses?

Officer Elections

Treasurer's Report

Jason Downs, RPL
Treasurer
Contract Senior Land Representative
Chevron Pipeline and Power Company

As of 10/26/2018, the LAAPL account showed a balance of	**$29,007.74**
Deposits	**$11,200.32**
Total Checks, Withdrawals, Transfers	**$647.77**
Balance as of 1/23/2019	**$ 39,560.29**
Merrill Lynch Money Account shows a total	**$0.00**

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 (Associate)

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Lawyers' Joke of the Month

Jack Quirk, Esq.
Bright and Brown

The Gospel According to Saint Titleist--Part II

1. I don't say my golf game is bad, but if I grew tomatoes they'd come up sliced. - Arnold Palmer
2. My handicap? Woods and irons. - Chris Codiroli
3. The ardent golfer would play Mount Everest if somebody would put a flag stick on top. - Pete Dye
4. I'm hitting the woods just great; but having a terrible time getting out of them! - Buddy Hackett
5. The only time my prayers are never answered is playing golf. - Billy Graham
6. If you think it's hard to meet new people, try picking up the wrong golf ball. - Jack Lemmon
7. It's good sportsmanship to not pick up lost golf balls while they are still rolling. - Mark Twain
8. Don't play too much golf. Two rounds a day are plenty. - Harry Vardon
9. Golf and sex are the only things you can enjoy without being good at either of them. - Jimmy DeMaret
10. May thy ball lie in green pastures, and not in still waters. - Ben Hogan
11. If I hit it right, it's a slice. If I hit it left, it's a hook. If I hit it straight, it's a miracle. – Anon
12. The difference in golf and government is that in golf you can't improve your lie. - George Deukmejian
13. Golf is a game invented by the same people who think music comes out of a bagpipe. - Lee Trevino
14. Reason they call it golf is cuz all the other four-letter words were taken. - Woody Woodbury

Finally:

The No. 1 Golf rule you MUST follow: take the car keys and cell phone out of your golf bag before you throw it into the creek. - Anon

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Guest Article

Is California becoming a National Security Risk to the U.S.?

By Ronald Stein

Published November 13, 2018 at CFACT

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We all know there is no love lost between California and Washington politics. However, since California is the 5th largest economy in the world, the policies and decisions made in California may be putting the U.S. at a national security risk.

Up and down the West Coast, California has numerous ports including those at: Los Angeles, Long Beach, Oakland, Richmond, Port Hueneme, San Diego, Martinez, San Francisco, Benicia, Stockton, Crockett, Sacramento, Redwood City, Eureka, and Alameda.

California's imports and exports of goods in July 2018 alone, amounted to more than $36 billion in imported goods and $14 billion in exported goods, for the one month. Popular commodities passing through U.S. west coast ports of entry include: electronics, computers and computer equipment, automotive parts, plastics, industrial supplies and materials, fuel and oil, and clothing.

The state's daily need to support its 145 airports (inclusive of 33 military, 10 major, and more than 100 general aviation) is 13 million gallons a day of aviation fuels. In addition, for the 35 million registered vehicles of which 90 percent are NOT EV's are consuming DAILY: 10 million gallons a day of diesel and 42 million gallons a day of gasoline. Thus, more than 60 million gallons of fuel per day is being used by the 5th largest economy in the world.

According to the U.S. Energy information Administration (EIA) the United States is now the largest global crude oil producer, surpassing Russia and Saudi Arabia. The American shale boom has important security implications as well, as America is now less dependent on crude oil from the turbulent Middle East, EXCEPT for California.

California is an "energy island" to roughly 40 million citizens, bordered between the Pacific Ocean and the Arizona/ Nevada Stateline with no pipelines over the Sierra Nevada Mountains. To access the oil shale boom from the rest of the country for California, that oil must to go through the Panama Canal to reach California ports. There are other options of crude oil by trucks, or by railroads, but both have been overwhelmingly ruled out environmentally.

California's in-state crude oil production, and Alaskan oil imports are both Struggling in-decline to meet the states' energy needs. Shockingly, California increased crude oil imports from foreign countries from 5% in 1992 to 56% in 2017.

California's choice to not increase in-state production may become a national security issue for further discussions regarding accessing crude oil from the largest shale reserves and ocean crude oil reserves in the country; Monterey Shale and Pacific Ocean. California's reliance on crude oil imports from foreign countries has been significantly increasing each year.

In 2017, California imported crude oil from foreign countries at the rate of more than 354 million barrels annually from oil rich foreign countries, costing California more than $26.6 billion annually at the Brent Average Crude Oil Spot Price which was recently $75.36 per barrel for September 2018. This equates to exporting more than $73,000,000 on a daily basis from California to Saudi Arabia, Ecuador, Columbia, Iraq, Kuwait, Brazil, Mexico and a handful of others for the crude oil energy needs of California.

The state's choice is to continue "exporting" $73 million of its dollars to oil rich nations on a DAILY basis to obtain oil from foreign countries which may be exposing the U.S to a national security issue. In addition, those foreign countries have less stringent environmental regulations than California, and transport their crude oil via air polluting ships delivering that oil to California ports.

The subject of energy for the world's 5th largest economy is about finding a workable, sustainable balance across equally important concerns for our economy, our shared sense of social equality, our impact on the environment, and a truly sustainable energy future.

Many in California are working hard to produce hydrocarbon energy efficiently, reliably, and safely, and many others are working hard to develop alternative energy sources that will efficiently, reliably, and safely produce carbon neutral energy. Despite those appreciative efforts, recent data confirms California's energy needs continue to grow exponentially with its increase of people, vehicles and businesses.

California Risk
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California Risk
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As mentioned in a recent Rand research study, on imported oil being a threat to U.S. National Security, the United States would benefit from policies that diminish the sensitivity of the U.S. economy to an abrupt decline in the supply of foreign crude oil to the 5th largest economy in the world.

The latest data from the California Energy Commission (CEC), shows that California fuel consumption is at the highest level since 2009, thus continuation of the state's dependency on foreign countries for its energy needs may be best for California but may not be in the best interest of U.S. national security.

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www.linkedin.com/in/ronaldstein/detail/recent-activity/

Our Honorable Guests

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

Cecilia Rendon, Esq. Bright and Brown
Uduak Ntuk, PE, City of Los Angeles
Artemis Manos, SR/WA, MBA, Southern California Gas Company
Frank Klam, CPL, AAPL Instructor/ Independent
Taylor Rowland, AAPL
Jamie Absher, E&B
Kim Bridges, Sentinel Peak
Molly Brummett, Sentinel Peak
William Jack, Windrock Gas
Jacob Myers

JAMES C'KARO
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Get Ready...Set.....Go!

(Nominations for LAAPL 2019 - 2020 Officers)

It is that time of the year to start considering a run for a LAAPL Chapter Officer for the 2019 – 2020 term. The following offices are open:

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

[1]*Per 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*

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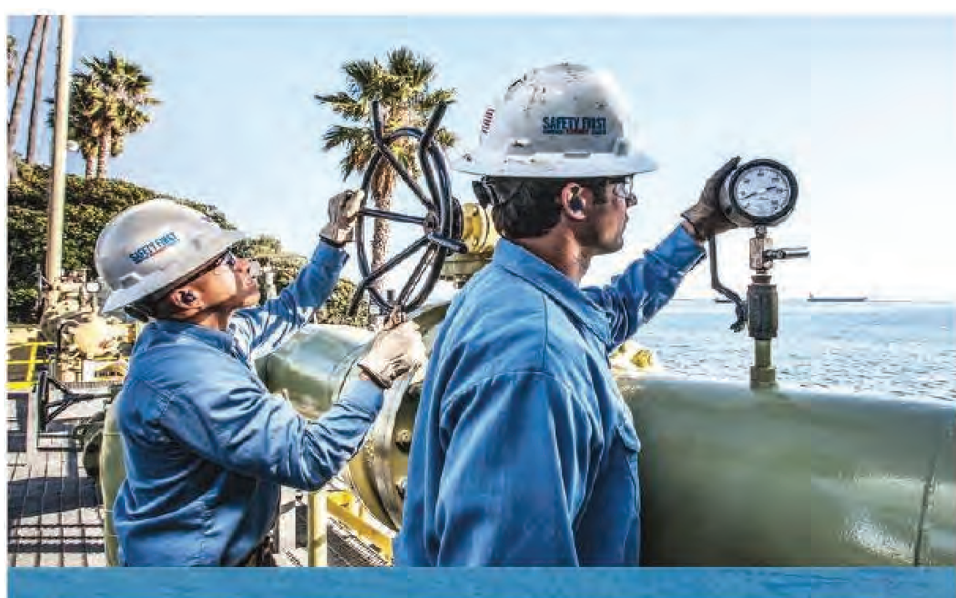

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LAAPL and LABGS Hold Annual Joint Luncheon

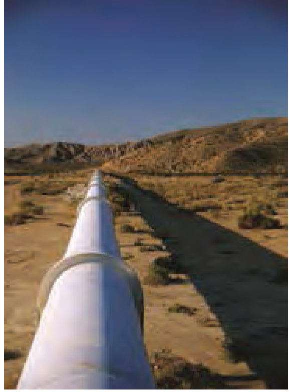
The Los Angeles Association of Professional Landmen and the Los Angeles Basin Geological Society will hold its joint luncheon in January. Please note the date of the luncheon is the fourth Thursday of January and the location is at the Grand at Willow Street Conference Center.

When: Thursday, Jan 24th [Fourth Thursday of the Month]
Time: 11:30am
Cost: $30 with reservations
$35 without reservations

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

Speaker: Eric Campbell, President, LA Seismic, LLC
Topic: "Seismic Data Along Newport-Inglewood Fault"
Contact: Wanjiru Njuguna, Treasurer
WNjuguna@semprautilities.com

Online at www.labgs.org.



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Case of the Month - Oil & Gas

PNP Petroleum I, LP v. Taylor - Shut-In Royalty Clause

By Manning Wolfe, Esq.

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Issue:

The appeal arose from a dispute over whether the term of an oil and gas lease was extended by a payment made by the lessee under the shut-in royalty clause. The lease provided that the lessee could pay a "shut-in well royalty payment" to extend the term of the lease "[i]f, at the expiration of the primary term there is located on the leased premises a well or wells not producing oil/gas in paying quantities."

Background:

On June 1, 2009, Ms. Taylor and Ms. Herbst (mineral owners) entered into an oil and gas lease with PNP Petroleum, providing for a one-year primary term and stating that it would continue "as long thereafter as oil and/or gas in paying quantities is produced from and sold from the land subject to this lease." At the time, there were 13 non-producing wells on the property under an old lease with another party that had expired. The lease between PNP and the mineral owners also contained a shut-in royalty clause that provided:

"SHUT-IN ROYALTY (Saving) If, at the expiration of the primary term there is located on the leased premises a well or wells not producing oil/gas in paying quantities, Lessee may pay as royalty a sum of money equal to $20 per proration acre associated with each well not producing. The shut-in well royalty payment will extend the term of the lease for a period of 1 year…."

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PNP wrote to the mineral owners stating that it intended to extend the lease term pursuant to the shut-in royalty clause and provided a check for the required amount. The mineral owners claimed that the shut-in royalty clause was inapplicable and that the lease was automatically terminated on June 1, 2010. PNP filed the lawsuit seeking a declaration that their payment of the shut-in royalties extended the lease term.

PNP's Position:

PNP argued that because there were 13 existing wells on the property that were not producing oil and gas, the shut-in royalty clause extended the lease. PNP offered a red-lined version of the lease agreement in which the language of the shut-in royalty clause was modified. Initially, the proposed shut-in royalty clause contained the words "capable of producing oil /gas in paying quantities", but during the negotiations these words were stricken from the agreement. PNP argued that this was evidence the parties did not intend for the clause to apply only if there were wells capable of producing oil and gas (even though that is the standard understanding in the industry of a shut-in royalty clause), but instead to apply if there were any non-producing wells on the property per the parties' agreement, whether or not they were capable of producing.

Mineral Owner's Position:

The mineral owners argued that under Texas law a shut-in royalty clause applies only when there was a lease capable of producing in paying quantities. They argued that this was the industry meaning of the term "shut-in royalty" and that the lease should be interpreted in accordance with the common use in the industry. The mineral owners also argued that the evidence of prior drafts of the lease and the negotiations is inadmissible under the rules of evidence.

Case - O&G
Continued on page 12

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Case - O&G
Continued from page 10

Trial Court Ruling:

The trial court sided with the mineral owners, applying the industry standard to the lease, and finding that the shut-in royalty clause was inapplicable and that the lease terminated. The trial judge also found that PNP's evidence of prior drafts of the lease agreement was inadmissible.

Appeal Issue:

The issues raised by PNP to the San Antonio Court of Appeals challenged the trial court's sustaining of objections to summary judgment evidence and its construction of the lease clause regarding shut-in.

Basic Law Regarding Interpretation of Oil and Gas Leases:

Texas courts seek to use standard principles and to determine the parties' intentions as expressed in a lease. See Heritage Res., Inc. v. NationsBank, 939 S.W.2d 118, 121 (Tex. 1996). Under Texas law, if a lease term has a generally accepted meaning in the oil and gas industry, that meaning is used by the court to construe the lease. See BP Am. Prod. Co. v. Zaffirini , 419 S.W.3d 495, (Tex. App. – San Antonio 2013) (pet. filed).

Generally, an oil and gas lease is written such that it contains a primary and a secondary term. The primary term is generally a set number of years. The secondary term generally provides that the lease shall continue in effect at the conclusion of the primary term if oil and gas is being produced in paying quantities at the end of the primary term. There are, however, certain "savings clauses," such as the shut-in royalty clause, common in oil and gas leases that allow an oil company to extend a lease beyond the primary term even if there is no production in paying quantities. Certain conditions must be met. The shut-in royalty is considered constructive production and will maintain the lease if its terms are satisfied.

Court of Appeals Decision:

In a lengthy opinion, Judge Catherine Stone rendered the verdict of the court of appeals and reversed the trial court. First, the court found that PNP's evidence of prior drafts of the lease agreement was admissible under the rules of evidence and should have been considered by the trial court. Next, the court reasoned that generally, a shut-in royalty clause would be interpreted in accordance with the general principal and only applied to wells capable of production. In this case, however, the evidence that "capable of" producing in paying quantities was stricken from the lease by the parties, changed that general principal. The parties' negotiations and agreed upon lease deviated from the general law that would have implied the "capable of" requirement in the lease because the parties expressly removed this agreement in the signed lease.

Therefore, the court determined that it was not the parties' intent to apply the generally accepted meaning of "shut-in royalty". Because there were wells located on the leased premises that were not producing oil and gas at the end of the primary term as required by the parties' agreement, and because PNP paid the required shut in royalties, the lease continued after the primary term.

Bottom Line - Reversed and Rendered:

The appellant court concluded that the trial court erroneously sustained the objections to the summary judgment evidence and consequently erred in its construction of the lease. They reversed the trial court's judgment and rendered judgment that the term of the lease was extended by the lessee's payment.

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

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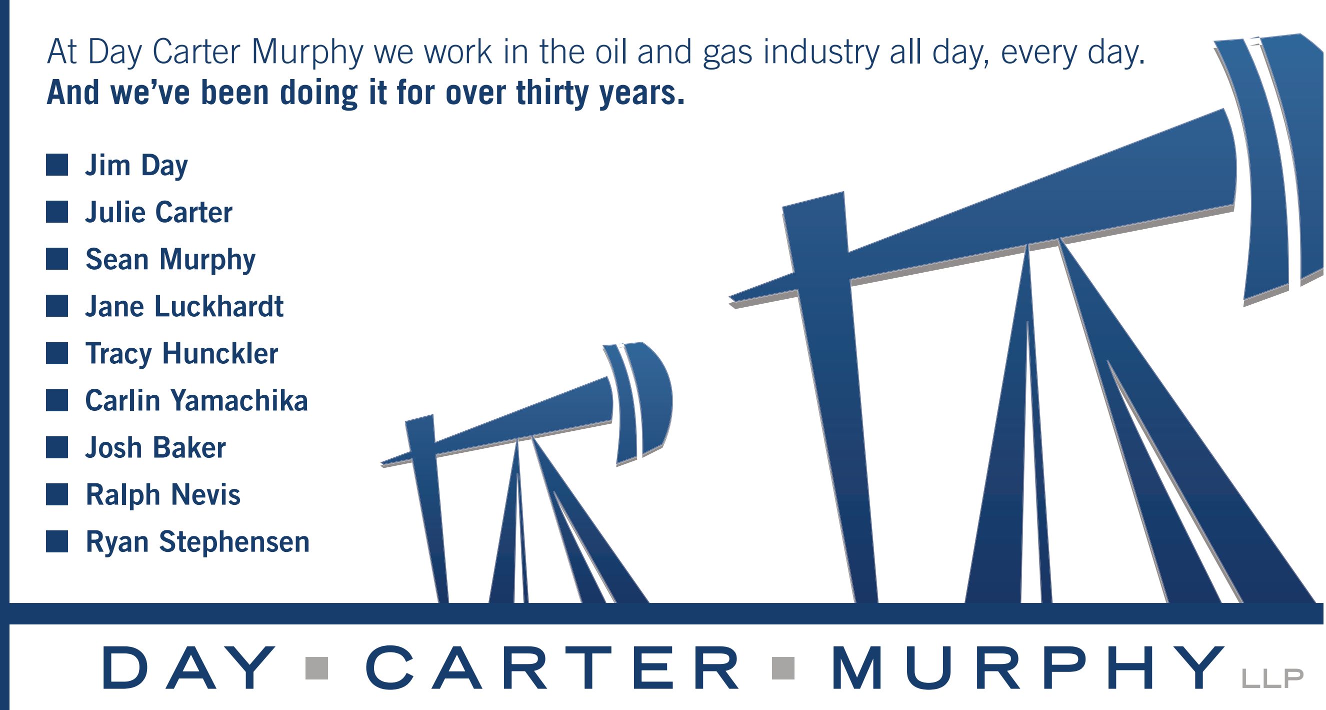
Legislative Update

by Mike Flores
Championship Strategies, Inc

The Legislative Update column has nothing to report this issue.



Case of the Month - Right of Way

The Strange Case of the Bona Fide, Good Faith Purchaser for Value of an Easement Who Wanted to Use It for Purposes Beyond Its Historic Use

By Michael Rubin, Esq., Partner, Rutan & Tucker, LLP
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A Case Reported for Chapter 67, IRWA January 8, 2019 Luncheon Meeting

Zissler v. Saville, (November 2018) 29 Cal. App. 5th 630.

This case involves two concepts that are important to land professionals who are involved in understanding rights under easement deeds. The first concept is whether an easement holder is limited in rights to the historic usage of an easement, such that the use cannot be expanded beyond the historic use. The second concept is that of the rights of a bona fide, good faith purchaser for value as opposed to a purchaser that does not so qualify.

APPENDIX A

The case arose out of an accommodation between 2 friendly neighbors, Corbett and Lupoli. Lupoli owned an acre of land with a house that backed onto a portion of the Corbett property. Lupoli had good access to his home from the adjacent street, but had difficulty getting to the back portion of his property because of the terrain and asked for an access easement from Corbett so that his gardener could more easily get to the back portion to landscape. Lupoli told Corbett that the easement would be used "lightly", and "sparingly" and "infrequently". When Corbett agreed, Lupoli, a lawyer, drafted the easement deed, "providing Grantee access, ingress and egress to vehicles and pedestrians o"[ver Grantors' real property from Green Meadows Road to Grantees' real property." The easement ran across "the most easterly portion of Grantors' real property" and was 10 feet wide and 90.46 feet long.

Corbett later sold his property to Zissler and Lupoli sold his property to Saville. Lupoli's gardener had only used the dirt roadway access easement to access the back area with a truck for landscaping several times a month. Lupoli told Saville how he used the dirt road but did not say that there were any special limitations on use of the easement.

So there was an easement where (1) the original parties had expressly discussed limitations on the use of an easement before it was created, (2) a deed was recorded that did not indicate any limitations on the use of the access easement, and (3) a purchaser of the property benefitted by the easement did not know that the parties had intended the easement to be limited in use.

Saville is what the law refers to as a bona fide, good faith purchaser for value because he paid fair value for the property (it was not an inheritance or a gift) and he did not have personal knowledge of any special deals or arrangements that the prior owner had made with someone else about the property, and nothing put him on special notice to investigate such special deals or arrangements.

It turns out that Saville wanted to use the access easement for much more than its historic use. Originally he wanted to level the existing house and use the easement for a construction project that would take up to 24 months and would involve

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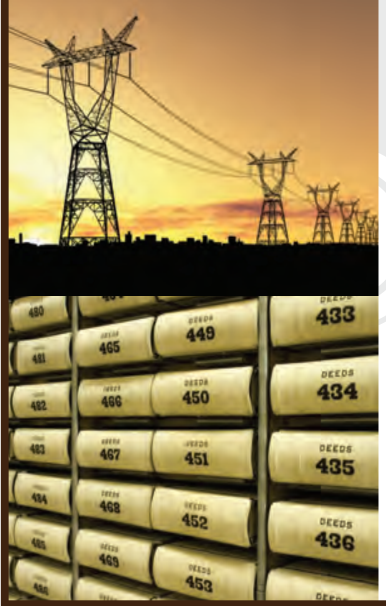

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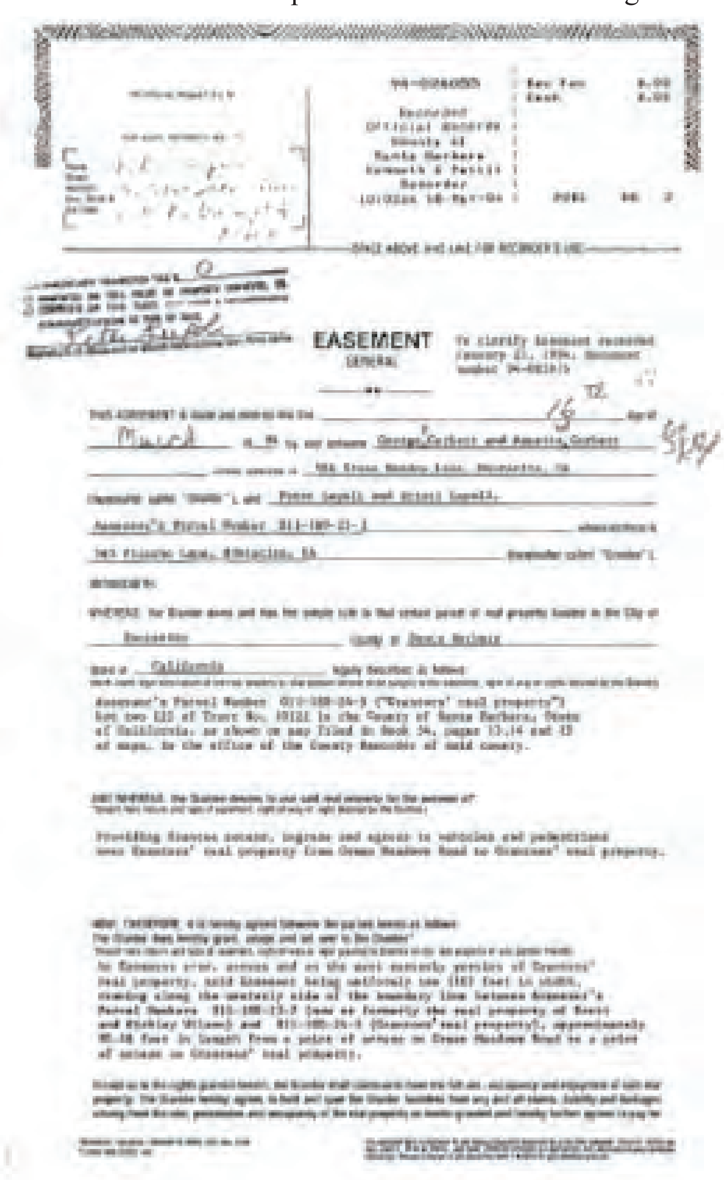
14,000 trips to the property.

Zissler sued Saville to stop this use and the trial court granted Zissler an injunction against Saville from using the easement for more than reasonably necessary for landscape maintenance at the rear of the property and other incidental use, at occasional and reasonable times. By the time the case got to the appellate court, Saville gave up on using the easement for construction purposes and arranged for construction access by other means, but still sought to have a broader interpretation of his easement rights, so he asked the appellate court to reverse the trial court's historic use limitation and allow him to use the easement as a service entrance to his property for maintaining not only the back area of the property, but also to maintain the new house he was constructing. This still went significantly beyond (1) the historic use, and (2) what the understood use was to be between the original grantor (Corbett) and grantee (Luponi).



EASEMENT

The Court of Appeal reversed the trial court and held that Saville was not limited to the historic use or to the use intended by the original grantor and grantee. There were two reasons. both of which were essential to the ruling. First, the easement deed was not ambiguous, but was clear on its face that there was no limitation on the use of the access easement. If there were an ambiguity, then the courts would look to the intention of the parties in creating the easement. Second, Saville was a bona-fide, good faith purchaser for value. As such, he could not be bound by unknown arrangements or deals between prior owners upon which he had no "inquiry notice" (enough information that he should have investigated further). That means that Lupoli could not have used the easement for more than the original intended purpose. It also means that anybody that Lupoli sold the property to would also be so limited, if Lupoli told the purchaser of the restriction, because that purchaser would not have then been a bona fide, good faith purchaser for value (the knowledge of the restriction would negate the good faith element).

The appellate court therefore allowed the easement to be used for purposes broader than the limited historical use, including use as a service entrance for maintenance of the new house. The court did not address whether it could be used for the intensive construction use Saville originally proposed, because Saville represented to the court that he was no longer seeking authorization for that intensive use.

<u>Take-Aways:</u> As expressed by a UCLA Law School Professor of Real Estate Law called as an expert at the trial of this case, "to rely on historic use [of the easement] or intent [of the parties creating the easement] would wreak havoc in the industry." "It would be disastrous to have to ferret out what the grantor or grantee intended because something is not delineated in the document." There is a "reasonable duty to investigate the Easement if there was something unclear; but since this was a standard easement, no investigation was required." Unless the purchaser actually knows or has good reason to know that the original parties intended only a limited use to be made of the easement, the purchaser is a bona fide, good faith purchaser for value, and will not be limited by the intentions of the original grantor or grantee.

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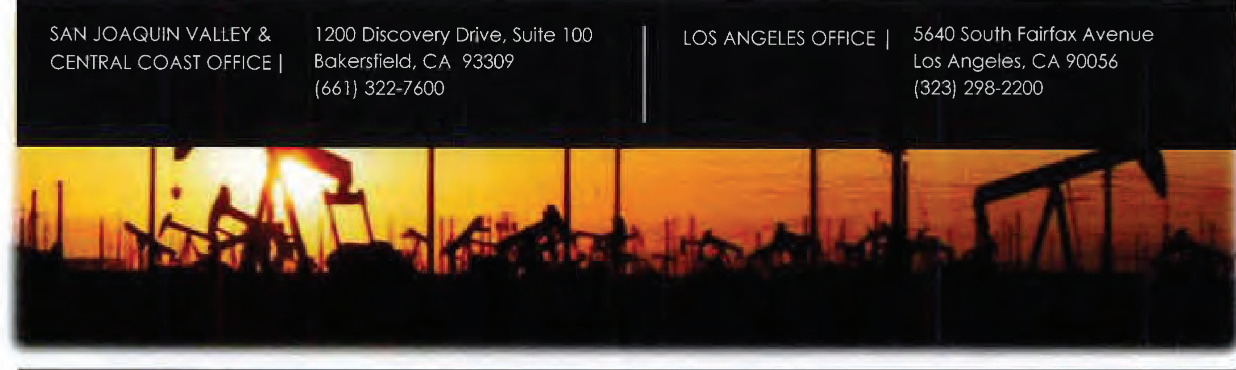

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Guest Article

The Frightful Cost of Virginia Offshore Wind

By Steve Goreham

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Ed. Note: Mr. Goreham is the Executive Director of the Climate Science Coalition of America, a non-political association of scientists, engineers, and citizens dedicated to informing Americans about the realities of climate science and energy economics.

On November 6, 2018, Virginia's State Corporation Commission (SCC) regulatory agency approved a project to construct wind turbines near Virginia Beach. The plan calls for construction of turbines 27 miles off the coast, to begin operation by the end of 2020. Virginia electricity rate-payers will pay the exorbitant costs of this project.

The project, named Coastal Virginia Offshore Wind (CVOW), will be the first offshore wind project in the mid-Atlantic. Dominion Energy, Inc. and Orsted A/S of Denmark will erect two 6-megawatt wind turbines supplied by Siemens Gamesa of Spain. The estimated project cost is a staggering $300 million, to be paid for in the electricity bills of Virginia businesses and households.

According to the Wind Technologies Market Report, US wind turbine market prices in 2016 were just under $1,000 per kilowatt, or about $6 million for a 6-megawatt turbine. Virginia will pay 25 times the US market price for the CVOW turbines.

The wholesale price for electricity in Virginia is about 3 cents per kilowatt-hour (kWh). This is the price received by coal, natural gas, or nuclear generating facilities. The electricity produced from the two offshore turbines will receive 78 cents per kWh, or a staggering 26 times the wholesale price.

The SCC acknowledged that the project was not the result of competitive bidding, and that the project was not needed to improve power system reliability or capacity reserve margin. They also concluded "…it appears unlikely that the cost of offshore wind facilities will become competitive with solar or onshore wind options in the foreseeable future." Virginia electricity rate payers will also pay for any project cost overruns.

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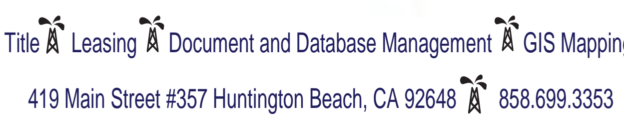

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Why would the State Corporation Commission approve such an expensive project? The SCC pointed out that on six separate occasions, the Virginia General Assembly declared that offshore wind was "in the public interest." Governor Ralph Northam said the project would harness Virginia's "offshore wind energy resource and the many important economic benefits that this industry will bring to our Commonwealth."

What is it about green energy that induces government officials to pay far above market prices? It is doubtful that governor Northam or Virginia Assembly members would pay 25 times the market price for food, clothing, or housing. But they are quick to approve a project that will soak Virginia electricity rate payers.

Beyond the project cost, Virginians should be concerned that these wind turbines will likely not survive to the end of their projected 25-year life. The CVOW project is the southernmost proposed wind project along the Atlantic Coast and the site of periodic hurricane activity.

According to the National Oceanic and Atmospheric Administration, 34 hurricanes have been recorded within 100 miles of the project site within the last 150 years. Five of these storms were Category 3 hurricanes, including Hurricane Bob in 1991 and Hurricane Emily in 1993. A hurricane passes through the area about every five years.

Project specifications call for the CVOW wind turbines to survive sustained winds of 112 miles per hour (50 meters per second). The turbines are also designed to survive waves of 51 feet (15.6 meters) in height.

But it's doubtful that these turbines will survive either the wind or waves of a major storm. According to the National Hurricane Center, Category 3 hurricanes exhibit sustained winds of 111 to 129 mph, stronger than the design limits. Category 1 hurricanes typically drive waves much higher than 50 feet. Hurricane Florence measured Category 1 wind speeds when it crossed the coast at Wrightsville Beach, North Carolina on September 14, 2018. But just two days before, wave heights of 83 feet were recorded on the northeast side of Florence.

Who speaks for the electricity rate payers of Virginia? It's certainly not Governor Northam, the General Assembly, or Dominion Energy. Long after government officials leave office, Virginia citizens will be on the hook for an expensive offshore wind system that is unlikely to survive the turbulent weather of the Atlantic Ocean.

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