Award Winning

The Override

Every Landman Wants One!

Volume XIII, Issue I | November, 2020

LAAPL
LOS ANGELES ASSOCIATION OF PROFESSIONAL LANDMEN

Presidents Message

Randall Taylor, RPL
President
Taylor Land Service, Inc.

As I write this, our Presidential election is in turmoil, with both sides claiming victory. There are allegations of voter fraud, ballot harvesting, etc., and a general distrust of the system.

The COVID 19 scare is still dominant. People are basically in a virtual prison, children are unable to go to school on a full-time basis, and businesses are shut down or running on 50% capacity. Here in California, our Thanksgiving holiday is being seriously hampered by the Governor's proclamations, with Christmas, no doubt, next on the list.

The oil price continues to yo-yo above and below the forty-dollar mark, and natural gas above and below three dollars. While the price of natural gas is encouraging, the cost of oil needs to climb much higher.

This year has certainly been full of more challenges than I can remember in quite a while. But, as I said in my last President's message, "Keep your heads high; keep a smile on your face; trust in your higher power whatever or whoever that is, and know that things will get better."

I encourage all of you to have energy-education conversations with your family, friends, neighbors, and anybody else that will listen. Let them know how lucky we all are to have a clean, efficient, plentiful, and constant power source in hydrocarbons. Unfortunately, the general public has been so brainwashed by the media that hydrocarbons are evil, and we need to reverse that idea.

I have been in conversations with The Grand. They are hosting meetings in their verandas, as long as the meeting

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Inside This Issue:

Meeting Luncheon Speaker

Gas Flaring - Overview and Regulatory Trends

Benjamin B. Holliday, Esq., President of Holliday ENERGY Law Group, will be our featured virtual luncheon speaker. His topic will cover the practice of flaring associated gas, which has increased exponentially in recent years, as operators increasingly target oil and liquid hydrocarbons in areas lacking sufficient gas takeaway capacity. State and federal regulators have taken notice of the environmental and waste implications and begun taking a more aggressive oversight posture.

Ben graduated in 2016 from St. Mary's University's dual-degree Master's and Juris Doctor program. He has represented exploration companies and mineral owners throughout all phases of exploration and development.

Luncheon Speaker continued on page 2

Opinionated Corner

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

The last "word" of the day, either in person or in electronic messages, seems to be "stay safe out there." In the early stages of the imported Covid19, who would have known most of the world would still be hunkered down at home and working remotely in November 2020?

Then the election fiasco came along and turned the political world upside down. While we wait for the demise of Covid19 to ride off in the sunset, at least the electoral process has an ending date. Both still causing unwanted heartburn means keeping the industrial size Tums bottle nearby and within easy reach. Forget about Zantac – it has been pulled from the shelves.

From what I have read here lately, oil prices may see a critically needed uptick, no matter where the election process takes us. It will not be soon enough to stop the bloodletting still happening in our industry, particularly the oil and gas industry's land side.

The "word" of the day – stay safe out there.

LAAPL RECEIVES AWARD

"The Override," the official newsletter of the LAAPL took first place (small chapter association category) at AAPL's first ever virtual Annual Meeting in June 2020. The newsletter has outstanding contributing writers, but it goes without saying that **Randall Taylor, RPL, of Taylor Land Service, Inc., Co-chair of the Publication/ Newsletter, does all the heavy lifting** when it comes to publishing this fine communication tool.

Luncheon Speaker continued from page 1

Ben holds various certifications and is licensed to practice in the states of Texas, Oklahoma, Ohio, North Dakota, Nebraska and Illinois.

West Coast Landmen's Institute

Mr. Covid19 decided to drop by for the year 2020 and caused much unwanted distress for WCLI, and the rest of the world. Rick Peace, Chair of WCLI originally planned the event to be held in San Diego at the Marriot Marquis San Diego Marina. He has now arranged the same venue for WCLI 2021.

The WCLI, a joint effort of the Los Angeles Association of Professional Landmen and Bakersfield Association of Professional Landmen, is scheduled for September 22nd – 24th, 2021.

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practices social distancing. So we can begin meeting there again as soon as we have enough members who are not being mandated by their companies to not attend outside meetings.

We have a great speaker lined up for our November virtual meeting. Ben Holliday will speak on " Gas Flaring - Overview and Regulatory Trends." You can read more about Ben and his topic elsewhere in this newsletter.

I look forward to seeing all of you in our "Hollywood Squares" meeting this week. And I can hardly wait until we are finally able to meet in person, hopefully, in January with the Geologists.

The Override is, and has been edited by Joe Munsey, RPL and published by Randall Taylor, RPL, since September of 2006.

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TBD

Chapter Board Meetings

Marcia Carlisle
The Termo Company
LAAPL Secretary

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

The LAAPL Board of Directors held a virtual meeting on August 26, 2020.

- Jason Downs requested a vote by the membership at the next in-person meeting to confirm Joe Munsey as Vice President of the LAAPL Board
- Randall Taylor to contact The Grand regarding future possible meetings at their location
- The Mickelson Golf Classic remained scheduled for October 29th, 2020. This tournament to be carried out in accordance to the golf course rules and COVID distance restrictions
- Updates occuring to the LAAPL website
- Jason Downs made a scheduling recommendation to the AAPL Field Landman Seminar team regarding a Field Landman Seminar in California in 2021. The recommended dates would be teaming with the BAPL golf tournament (possibly the night before) in April, or the WCLI San Diego opening reception in September 2021

Treasurer's Report

Jason Downs, RPL
Treasurer
Land Representative
Chevron Pipe Line and Power Company

As of 3/11/2020, the LAAPL account showed a balance of	**$34,645.72**
Deposits	**$5,077.16**
Total Checks, Withdrawals, Transfers	**-$6,060.14**
Balance as of 11/6/2020	**$33,662.74**

New Members and Transfers

Allison Foster, RL
Membership Chair
Independent

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

Scheduled LAAPL Luncheon Topics and Dates

November 19, 2020
Speaker: Benjamin B. Holliday, Esq.
President, Holliday ENERGY Law Group
Topic: Gas Flaring - Overview and Regulatory Trends

January 28, 2021
[4TH Thursday]
Annual Joint Meeting with
Los Angeles Basin Geological Society

March 18, 2021
TBD

May 20, 2021
TBD
Officer Elections

Lawyers' Joke of the Month

Jack Quirk, Esq.
Bright and Brown
Words of Wisdom About Golf

Go play golf. Go to the golf course. Hit the ball. Find the ball. Repeat until the ball is in the hole. Have fun. The end.
Chuck Hogan

If you think it's hard to meet new people, try picking up the wrong golf ball.
Jack Lemmon

It's good sportsmanship to not pick up lost golf balls while they are still rolling.
Mark Twain

Don't play too much golf. Two rounds a day are plenty.
Harry Vardon

Our Honorable Guests

The only guest who continues to make his appearance at the Grand is the Wuhan Corona Virus. Due to Mr. Wuhan Covid-19's insistence and irrational exuberance to show up, we are avoiding him like the plague, hence we are not showing up to his dismal delight.

Legislative Report - None this Issue

Education Corner - None this Issue

Director Report

AAPL Quarterly Board Meeting

December 13, 2020

Silverado Resort ~ Napa, CA

Name:	Jason Downs, RPL
Company:	Chevron Pipeline & Power
Email:	jasondowns@chevron.com
Local Association Full Name:	Los Angeles Association of Professional Landmen

73 **Total Local Association Members**

44 **Total Active ("Land Professionals") AAPL Members within your Association**

Association projects/activities:

The Mickelson Golf Classic was a success and raised $1,250 in net proceeds for the R.M. Pyles Boys Camp.

LAAPL holds out hope for the joint luncheon meeting with the geologists in January (1/28/21) at The Grand in Long Beach. Future LAAPL luncheon dates are 3/18/21 & 5/20/21.

West Coast Land Institute San Diego has been rescheduled for September 22-24, 2021.

LAAPL Officers for 2020-2021
President: Randall Taylor, RPL
Vice President: Joe Munsey, RPL
Past President: Jessica Bradley, CPL
Secretary: Marcia Carlisle
Treasurer: Jason Downs, RPL
Directors: Mike Flores & Ernest Guadiana, Esq.

Association requests/concerns:

Los Angeles would like to see AAPL and California Oil & Gas Associations (CIPA & WSPA) work in tandem on support for California political initiatives and public awareness.

Local news including business activity and day rates:

California Resources Corporation "CRC" has emerged from chapter 11 bankruptcy.

San Ramon based Chevron Corporation completed a 10-15% reduction of its workforce.

Independent work in LA basin is minimal with a few Landmen working project based and quasi-inhouse roles. Broker rate $40-$100 an hour with seasoned Landmen charging a premium.

Bylaws Policy and Procedure suggestions:

None

2020 MICKELSON GOLF CLASSIC

Jason Downs, RPL, Golf Tournament Chair

The 16th Annual LAAPL Mickelson Golf Classic was held on Thursday, October 29th at Sand Canyon Country Club and was another major success benefiting the R.M. Pyles Boys Camp (Pyles).

With the generosity of those who came out in support, the Los Angeles Association of Professional Landmen are happy to announce it will contribute the entirety of the tournament net proceeds to Pyles in the amount of $1,250.

24 LAAPL members and guests enjoyed a perfect sunny day at Sand Canyon, located in Santa Clarita, California.

Our first-place team was sponsored by Joe Peterson and Rich Maldonado, principals of Spectrum Land Services. The team included ringer replacements in Blain Meith, Bill Weldon, along with Pat Moran and Jason Downs who shot 13 under. Second & third place went to team's CRC and White Wolf Land who shot 10 and 9 under respectively.

Of course, the young men who attend the R.M. Pyles Boys Camp were the real winners of the day, thanks to the generous contributions of southern California's professional landmen and their respective employers who sponsored this year's LAAPL charity golf event. The LAAPL Membership and Golf Committee extend their sincere appreciation and gratitude to each, and every sponsor, attendee, and volunteer for their support and generous contributions to this year's fundraiser.

Established in 1949 by Mr. Pyles, a Huntington Beach oilman, R. M. Pyles Boys Camp is dedicated to the task of building healthier and happier generations of productive young Americans, firmly endowed with the ideals and principles of this Nation. Pyles Boys Camp gives a new confidence in life through a high quality and challenging High Sierra wilderness camp experience. R.M. Pyles Boys Camp continues to follow up with year-round programs to support and reinforce values learned at camp.

AT PURPLE LAND MANAGEMENT, WE BELIEVE THERE'S A DIFFERENT WAY TO PROVIDE LAND SERVICES. A WAY THAT BUCKS INDUSTRY CONVENTIONS IN FAVOR OF NEW IDEAS THAT ACHIEVE BETTER RESULTS. A WAY THAT USES THE LATEST TECHNOLOGY TO DRIVE DOWN COSTS AND AMP UP EFFICIENCIES. A WAY THAT SEES OUR WORK AS PART OF A REVOLUTION DESIGNED TO MAKE OUR COMMUNITIES AND OUR COUNTRY BETTER. THIS WAY IS THE PURPLE WAY- AND IT'S THE HEART AND SOUL OF WHO WE ARE, WHAT WE DO AND HOW WE DO IT.

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Chapter President Announces Committee Chairs

Our newly elected Chapter President, Randall Taylor, RPL, of Taylor Land Service, Inc. announces his Committee Chairs for the 2020 – 2021 term. The Los Angeles Association of Professional Landmen will be greatly served by the following members:

Legal Counsel	Ernest Guadiana, Esq., Associate, Elkins Kalt Weintraub Reuben Gartside LLP (310) 746-4425 eguadiana@elkinskalt.com
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Website Chair	Chip Hoover, Independent (310) 795-7300 – Cell chiphoover@hotmail.com
Education Chair	TBD
Publishing/Newsletter Chair	Randall Taylor, RPL, President Taylor Land Services (949) 495-4372 randall@taylorlandservice.com Joseph D. Munsey, RPL, Senior Land Advisor Southern California Gas Company (949) 361-8036 jmunsey@socalgas.com
AAPL Region VIII Director	Jason Downs, RPL Senior Land Representative Chevron Pipeline & Power (310) 669-4005 jasondowns@chevron.com
Legislative Chair *[By Popular Demand)*	Mike Flores, President Flores Strategies, LLC (310) 990-8657 – Cell mikef@floresstrategies.com
Mickelson Golf Classic Chair	Jason Downs, RPL Senior Land Representative Chevron Pipeline & Power (310) 669-4005 jasondowns@chevron.com
Nominations Chair	TBD

Immutable Principles of Energy

By James R. Halloran

1. We desire seven qualities in our energy sources: i.) Affordability (cheap), ii.) Abundance, iii.) Reliability, iv.) Purity, v.) Universal access, vi.) Environmentally friendly, and vii.) Produced and delivered in a non-disruptive manner to our lifestyle (safe). Like it or not, they cannot all occur together.
2. Energy supply/demand cycles generally have a seven to ten years duration, after which they often reverse.
3. Supply creates demand. Artificial/manufactured energy supply - due to its low intensity, diminished EROEI, and resulting high cost - will tend to reduce demand.
4. Crude oil has a positive price differential over competing sources of energy, regardless of the price of crude oil.
5. Improvements in energy efficiency will lead to an increase in energy consumption, assuming energy sources reflect market pricing (Jevons Paradox).
6. The more a growing society demands greater access to energy, the more it will create roadblocks to its delivery.
7. Governments look at energy fields as sources of revenue, not as sources of energy:
    - Governments have a disincentive to promote efficiency/conservation
    - Income streams will be protected as to magnitude
    - Long-term energy planning occurs inversely with the complexity of the economic system
8. Increases in regulation promote higher energy pricing. Decreases in regulation are rare.
9. If “jobs” and/or “environment” are used as a primary reason for an energy project, it will have poor economic rationale.
10. Promoters of subsidized energy sources will work against improvements in energy technology, especially where newer entries may be viewed as competition for funds or market position.
11. Energy independence is a myth.
12. When a forecast appeals to general societal self-worth, perception will trump reality until proven false (and often longer). (See: "100-year cheap supply of natural gas.")
13. Commodities are priced at the margin – the last 1% dictates the price.
14. The establishment of a market price (supply, demand, and external factors) for an energy commodity is a process, not an event. If a commodity (e.g. crude oil) reaches a forecast price in the future, the required question is: What happens next?
15. Never confuse hydrocarbon reserves with production.
16. The biggest and best oil and gas fields are developed first (relative to the technology available).
17. Once a field goes into decline, it will not increase production beyond this peak in the future without capex infusions that will prove to be uneconomic.
18. In a seller’s market, higher prices inevitably reduce supply from producing countries, as risk capital is not needed, reserves are viewed as an investment, and production is either restrained or diverted to local use. In a buyer's market, production is increased and capital flows in to buy perceived cheap assets.
19. In dealing with OPEC, pay attention to what its members do, and give little heed to what they say.
20. The media knows nothing about the oil & gas business. The more strident the published predictions of a price extension above (below) extreme levels, the closer that market is to a temporary top (bottom).
21. "This is the classic dilemma of democracy: Too many people benefit from the status quo, but the status quo is not sustainable" - Robert Samuelson (2005)
22. “It’s always something” - Roseanne Roseannadanna

Mr. Halloran can be reached at james@energyexcerpts.com.

LAAPL Presents

The Mickelson Golf Classic ~ 2020

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NEPA Rules Rewrite: What's in a Name?

Edward V. A. Kussy, Esq., Partner
Law Firm of Nossaman LLP
Washington, DC

Changes in Definitions Section May Create Clarity for Agencies, Ammunition for Opponents

This is the **first** in a series of eAlerts on revisions to National Environmental Policy Act (NEPA) regulations published in the Federal Register on July 16, 2020 by the Council on Environmental Quality (CEQ). CEQ's revised rules amend 40 C.F.R. Parts 1500-1508. Nossaman attorneys Ed Kussy, Rob Thornton, Svend Brandt-Erichsen, Rebecca Hays Barho, Brooke Marcus Wahlberg, David Miller, and Stephanie Clark are contributors for this series.

Nossaman LLP will be hosting a webinar to discuss the recent NEPA changes. Here is the link to Nossaman's website where people can register: https://www.nossaman.com/newsroom-events-the-new-nepa-regulations-a-practical-guide-to-what-you-need-to-know [nossaman.com]

We begin our series on the revised NEPA regulations by describing changes CEQ has made to the backbone of the regulations: the definitions section.

For many regulations, the "definitions" section is fairly innocuous. This has never been the case for the CEQ's NEPA regulations. In defining various critical terms, CEQ attempted to set the bounds on the scope and type of analyses contemplated by various elements of the NEPA process. The new CEQ rules are no different. Thus, a good deal of the early commentary of the new regulations has focused on how the definitions changed, what has been added, and what has been left out. Our commentary will focus on those changes likely to be most significant or controversial:

"Categorical Exclusion" – The new definition of a categorical exclusion (CE) is quite narrow, simply referring to those actions listed as CEs in agency implementing procedures. This definition must be read together with 40 C.F.R. §§1501.4 and 1507.3(e)(2)(ii), which establish boundaries for CEs that are much like the prior version of the regulations. The rule continues to require agencies to list CEs in their implementing procedures. Some agency procedures, like those of the federal surface transportation agencies, contemplate that a project that is not listed, but would otherwise qualify as a CE, could be treated as a CE with some additional documentation. Not all agencies have such a provision in their implementing rules, however, and the new rule does not provide them this additional level of flexibility. Agencies are allowed to use CEs from other agencies (40 C.F.R. §1506.3(d)), but the language of this provision does not seem to allow adoption of a process to effectively define a new, project- or program- specific CE.

"Effects" – The change to the definition of "effects" in the new rules may end up as a primary flashpoint in the litigation that is sure to come. Likely to receive the greatest attention are the things removed from the old regulation. For example, as described in greater detail below, CEQ has eliminated explicit references to "indirect" and "cumulative" effects. Although the new definition of "effects" contains language that seems quite broad, other provisions seem to constrain the scope of analysis. This creates internal ambiguities. Simply changing critical, well-established concepts could well lead to more litigation until the precise scope of the changes is defined by future court decisions.

The new definition first states that effects or impacts of the action are those that are: (1) reasonably

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foreseeable; and (2) have a reasonably close causal relationship to the proposed action or alternatives. While the new rule drops an explicit reference to "indirect effects," it explicitly includes the idea that effects could occur either at the same time and place as the proposed action or its alternatives or could occur later in time and be further removed in distance from the proposed action. While the definition and preamble may imply that an agency could still consider what used to be called indirect and even cumulative effects, opponents of the new rules will certainly argue otherwise.

The new rule expressly rejects a simple "but for" causal relationship in determining the scope of effects to be considered. Actions too far removed in time or distance, or at the end of lengthy causal chain need not be considered. The definition specifically excludes actions that the agency has no ability to prevent or that would occur regardless of the proposed action. This considerably narrows the effects that any agency must consider in preparing a NEPA document and may assist project proponents in limiting the breadth of NEPA reviews.

On the other hand, the causation standard may also set up an internal contradiction in the definition itself, as the scope of "effects" seems at once to be fairly broad and then is narrowed in a way that rejects the initial precept. This is exacerbated by 40 C.F.R. §1501.3(b), which instructs agencies on how to determine if an effect is significant. That section does not limit the analysis to those effects the agency has power to control. These and other internal inconsistencies may rear their heads in future litigation.

Of particular interest to those who closely watch NEPA practice is the elimination of CEQ's clear requirement that agencies examine "cumulative impacts." Cumulative impacts were designed in CEQ's original regulations to measure the impacts of the proposed action in context with other past, present, and future actions irrespective of who undertook them, thus measuring the incremental effect of the proposed action on the environment. Not only has the analysis of cumulative impacts been dropped, the new "effects" definition includes the further limitation that agencies need not consider impacts beyond their control. It must be said that the treatment of cumulative impacts in a NEPA document has often presented problems, as it was difficult to draw boundaries around the scope of this analysis. In many EISs, the cumulative impacts analysis was little more than a report of what else was going on or planned in the area, with only cursory analyses of any synergistic impacts with the proposed action. Thus, while there has been much handwringing and writing about ending the requirement to specifically address cumulative impacts, the real impact of this change is uncertain. Nevertheless, and as noted above, both the removal of cumulative effects and the ambiguity of the internal inconsistencies in the new rule are sure to be the subject of litigation.

Finally, we would be remiss not to mention CEQ's elimination of the term "significantly" from the definitions section. The preamble to the final rule states that the definition of "significantly" has been replaced by new section 40 C.F.R. § 1501.3(b), which describes the factors agencies should consider in determining whether effects are significant. While that provision does address when an impact should be considered "significant," it is far narrower than the old definition. Further complicating matters, the terms "significantly" and "significant" have many meanings in federal environmental law (for example, in some programs, it simply means "capable of being measured," essentially a scientific concept). That is clearly not the case in the NEPA context. A clear description as to what "significant" meant for NEPA purposes was useful. The old definition was closely allied to the types of impacts that might give rise to an EIS, which was at least informative to the public and courts reviewing NEPA documents. Like other aspects of the new "effects" definition, we fear that the lack of clarity of this central NEPA concept could create problems and litigation.

"Legislation" – The new definition of "legislation" is much shorter than its predecessor. Some provisions have been moved to other places in the new rule. The exclusion of actions proposed by the President fails to recognize how federal legislation is developed or how treaties are dealt with administratively. It is true that the

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Supreme Court has held that actions reserved to the President are beyond the scope of NEPA. But, in a sense, virtually all proposals for legislation come from the President. Thus, when legislation is developed by a department of the executive branch, it must be reviewed by the Office of Management and Budget (technically a part of the White House) for consistency with the President's policies and other government actions. Does this make the legislative proposal an action by the President? Similarly, requests for the ratification of treaties are no longer included in the definition. While treaties and other international agreements are approved by the President, they are often negotiated by the various federal departments and then sent to the White House, and, perhaps the State Department, for approval. Only a few treaties directly involve the President. How is this different from the way legislation is handled? The new rule provides no guidance with respect to these issues.

"Major Federal Action" – There are several important changes in the new definition. The old rule plainly stated that the term "major" does not have a meaning independent from the term "significantly." Thus, any action with significant environmental effects was a major action. The new rule rejects this premise. Actions which are not "major" federal actions, such as actions with minimal federal involvement or investment, are not subject to NEPA, whether or not they have a significant environmental impact. Thus, for example, where a state uses only a small amount of federal funds on a large project, NEPA may not apply. For transportation projects, this provision parallels a CE added pursuant to MAP-21 (the 2012 transportation reauthorization statute) for small projects or projects with limited federal assistance. See 23 C.F.R. §§771.117(c)(23) and 771.118(c)(18). This provision may similarly narrow the degree to which NEPA applies for non-federal projects requiring some level of federal permitting or other authorization, although it remains to be seen whether agencies will limit NEPA review in practice.

The style of the new provision is somewhat strange and departs from the previous provision. Rather than defining what constitutes a major federal action, the definition focuses on what is not a federal action, mirroring, in many ways, exclusions that have evolved over time in various court decisions. The actual definition appears almost as an afterthought.

Of particular interest are two exclusions from what will be viewed as "major federal action": activities that are non-discretionary and non-federal projects with minimal federal funding where an agency does not exercise sufficient control and responsibility over the outcome of the project at issue. Certain environmental permits issued by federal agencies such as the U.S. Fish and Wildlife Service are arguably non-discretionary in the sense that where certain criteria are met, the agency is required to issue the permit (see, e.g., "shall" language set forth in Endangered Species Act section 10). These same types of permits often do not dictate whether a project will or can proceed, though how a project proceeds can be affected by whether an agency does, in fact, issue the requested permit or approval. These issues have been argued and variably won and lost over time in various courts. Like so many of the other definitions, it remains to be seen whether and how agencies will change their approach to NEPA review and how courts will view such changes in the future.

"Mitigation" – The only change to this important definition is the note that NEPA requires that mitigation be considered and does not require the adoption of mitigation measures. This is well- established law and the new rule continues to contain the requirement that agencies identify the manner in which the provisions in the NEPA document will be met. However, the new rule may do nothing to limit NEPA challenges that focus on the failure of an agency to prove that mitigation provided by a project will, in fact, be implemented.

"Page" – This is an interesting new definition because of the greater emphasis on the page limitations for EAs and EISs. The number of words per page is specified (500), presumably to avoid attempts to go around the page limitation by reducing the font of the print, but excluded are maps, diagrams, graphs, tables, and other

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graphic material. This type of material usually takes up a fair amount of space in the typical EIS, providing considerable flexibility for staying within page limits.

"Notice of Intent" – This definition is substantially simplified. Other parts of the new rule make considerable change to the "NOI," most importantly not requiring its publication prior to starting the scoping process.

"Publish and Publication" – This is a new definition that provides greater flexibility by expressly allowing key NEPA documents, such as EISs, information, etc. to be published electronically. Many transportation agencies already follow this practice.

"Reasonable Alternatives" – This is a new definition that makes clear that the alternatives considered in the NEPA document must meet the agency's purpose and need, and, in the case of permit application "must meet the goals of the applicant." The preamble describing this definition states that this means that the goals of the applicant must be "considered." This is quite different from the explicit language of the new definition, and is bound to be a source of litigation. Transportation agencies are less likely to encounter this issue because projects are developed through a planning process, and a range of alternatives typically meet purpose and need. Non-federal project proponents working with federal agencies preparing NEPA documents may be able to use the new definition to minimize the number of alternatives carried forward for detailed analysis in a NEPA document, or may continue to experience resistance from agencies relying on the language in the preamble rather than the language in the definition itself.

"Reasonably Foreseeable" – This definition is new, but incorporates a standard that has been around for quite some time. That is, what would a person of ordinary prudence consider in reaching a decision. While this is a very fluid, fact dependent standard, its implications could be significant, particularly with respect to what effects are analyzed in the NEPA document. The issue of reasonable foreseeability likely will be a flashpoint in future litigation, particularly as it relates to climate change.

"Senior Agency Official" – This is a new concept in the regulations, explained more fully in the text of the rule. The official is of assistant secretary rank or higher, and has overall responsibility for the agency's NEPA compliance. An official of this rank is typically a political appointee.

"Tiering" – The new definition is shorter, but substantially similar. An important difference is that under the new rule, the first tier document need not be an EIS. The old regulation only references EISs for the first tier. Under the new rules, we may begin to see first tier EAs; however, this approach may create problems for later NEPA documents where impacts may be significant.

There are changes to other definitions. However, we do not believe they will have a significant impact. For example, the definition of scoping has been considerably shortened, but the changes to the scoping process are dealt with elsewhere in the regulation. As with the rest of the new rule, CEQ seeks to justify the changes with extensive citations to case law. However, the sheer number of NEPA decisions could justify alternative outcomes.

In sum, while many of the changes in definitions may not practically alter the legal landscape associated with NEPA review, codification of long-standing agency practice and some case law nevertheless may affect how certain agencies implement NEPA review in their planning and permitting processes, and will certainly provide ample opportunity for third parties to instigate facial and project-specific challenges to the new regulations. Because many of the regulatory changes are in line with the practices of transportation agencies, such agencies may not experience a significant shift in practice or uptick in litigation.

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2016 Oklahoma Statutes
Title 60. Property
§60-820.1. Airspace Severance Restriction Act.
Universal Citation: 60 OK Stat § 60-820.1 (2016)

Ed. Note: Charles Spalding provided this Oklahoma Statute in AAPL's Landnews Digest on June 12, 2020.

A. This act shall be known and may be cited as the "Airspace Severance Restriction Act".

B. It is the intent of this act to restrict the permanent severing of the airspace over any real property located in this state for the purpose of developing and operating commercial wind or solar energy conversion systems. Leasing arrangements for development of wind or solar energy conversion systems may be made only with the legally authorized owner of the surface estate pursuant to the provisions and restrictions provided by this act or otherwise provided by law. The provisions of this act shall not apply to any property owner utilizing wind or solar energy conversion systems for domestic use only.

C. For the purposes of this act a "wind or solar energy agreement" means a lease agreement, whether or not stated in the form of a restriction, covenant, or condition, in any deed, wind or solar easement, wind or solar option or lease securing land for the study or production of wind or solar-generated energy, or any other instrument executed by or on behalf of any owner of land or airspace for the purpose of allowing another party to study the potential for, or to develop, a wind or solar energy conversion system on the land or in the airspace. A wind or solar energy agreement shall in no way be deemed to contravene, supersede, amend, modify or alter the existing powers, requirements, limitations or other provisions of statutory or common law pertaining to aviation, air transportation, air commerce or air operations.

D. A wind or solar energy agreement shall run with the land benefitted and burdened and shall terminate upon the conditions stated in the wind or solar agreement.

E. An instrument entered into subsequent to July 1, 2010, that creates a land right or an option to secure a land right in real property or the vertical space above real property for a solar energy system, for a wind or solar energy conversion system, or for wind measurement equipment, shall be created in writing, and the instrument, or related memorandum of easement, or an abstract, shall be filed, duly recorded, and indexed in the office of the county clerk in the county in which the real property subject to the instrument is located. The instrument, but not the related memorandum of easement or abstract, shall include but not be limited to:

1. The names of the parties;

2. A legal description of the real property involved;

3. The nature of the interest created;

4. The consideration paid for the transfer;

5. A description of the improvements the developer intends to make on the real property, including, but not limited to, roads, transmission lines, substations, wind turbines and meteorological towers;

6. A description of any decommissioning security as defined in subsection B of this section, or other requirements related to decommissioning; and

7. The terms or conditions, if any, under which the interest may be revised or terminated.

F. No interest in any resource located on a tract of land and solely associated with the production or potential production of wind or solar-generated energy on the tract of land may be severed from the surface estate except that such rights may be leased for a definite term pursuant to the provisions of this act.

G. The provisions of this act shall not affect any agreements or contracts entered into pursuant to the provisions of the Oklahoma Airspace Act, Section 801 et seq. of this title. Added by Laws 2010, c. 334, § 1, eff. July 1, 2010. Amended by Laws 2011, c. 50, § 1, emerg. eff. April 13, 2011.

In the petroleum industry we have had @100 years of litigation to sort this out and still have issues, however I'm thinking one day, if it hasn't already happened, that winds aloft will be purchased, traded, or sold just as minerals are today, and that surface owner rights may be similar to those of our industry. The surface might be sub-servant to "winds aloft", the surface owners might be paid damages for ROW, roads and turbine sites, and yet not receive "royalties".

First Arizona Oil Well

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Navajo Indian Reservation produces oil and natural gas (and helium) in 1950s after decades of drilling.

After reports of oil seeps in the late 1890s, the search for commercial quantities of oil in Arizona began in 1902, one decade before statehood.

Cover from a 1961 report of Arizona Oil and Gas Conservation Commission; painting by E. M. Schiwetz, courtesy Humble Oil Co.

Joseph Heslet, a part-time prospector from Pennsylvania, drilled a few unsuccessful wells that showed traces of oil. His effort caught the attention of exploration companies, including several arriving from the 1901 giant oilfield discovery at Spindletop Hill in Texas. In 1905, a wildcat well was drilled in the Chino Valley, 20 miles north of Prescott, that reached a depth of 2,000 feet before being abandoned.

A well drilled in 1906 in Graham County by A. C. Alexander was abandoned as a dry hole at 1,400 feet. Other exploration attempts followed, most lacking knowledge of the emerging science of petroleum geology. There would be 50 more years of Arizona dry holes.

“A series of speculative ventures and explorations in oil drilling occurred over the ensuing decades, followed by the discovery of helium, an industrial gas that has become a major industry in the state,” noted a March 2004 article at Tucson.com. Better known for abundant copper deposits, it was the search for petroleum that led to helium discoveries in Arizona (also see Gas, Oil and Development Company in Kansas).

Kipling Petroleum Company discovered helium 20 miles east of Holbrook in Navajo County in 1950, but "commercial production of helium in Arizona began in 1961 with the state's first helium extraction plant producing 9 billion cubic feet of gas over 15 years," the article explained.

TABLE I
OIL AND GAS POOLS OF ARIZONA
(Exclusive of Helium Fields)

Discovery Well and Date	Location	Pool Name	Production
Shell Oil #2 East Boundary Butte 1954	3-41N-28E	East Boundary Butte	Mainly gas, some oil; Hermosa formation at 4540 feet
El Paso Natural Gas Co. and Stanolind Oil and Gas Co. #1 Bita Peak 1956	19-41N-31E	Bita Peak	Gas, and Condensate; Paradox formation at 5080 feet
Franco-Western Oil Co. #1 Navajo 1956	22-41N-28E	Toh-ah-tin	Gas; Paradox formation at 5359 feet
Superior Oil Co. #2 Navajo H. 1957	16-41N-30E	Unnamed	Gas and Distillate; Paradox formation at 5000 feet
Texas Pacific Coal and Oil Co. #1 Navajo - 138 1959	11-40N-28E	Dry Mesa	Oil; Mississippian at 5566 feet
Texaco, Inc. Navajo 1-Z 1960	36-41N-30E	Unnamed	Oil; Anethi formation (Devonian), 6750 feet. 6.2% helium in Mississippian natural gas

Arizona's first natural gas well in 1954 (top) and first significant oil well in 1959. Image from "Oil, Gas and Helium in Arizona, Its Occurrence and Potential," page 47.

Arizona became the 30th petroleum-producing state on October 13, 1954, with a natural gas well.

Shell Oil Company completed the East Boundary Butte No. 2 well south of the Utah border on Apache County's Navajo Indian Reservation. Natural gas was discovered as the well reached a depth of 4,540 feet.

"The first producing well in Arizona was drilled by Shell Oil Company in 1954 on a surface structure known as the East Boundary Butte anticline," proclaimed a 1961 report by the Arizona Oil and Gas Conservation Commission. That well found natural gas and a small amount of oil.

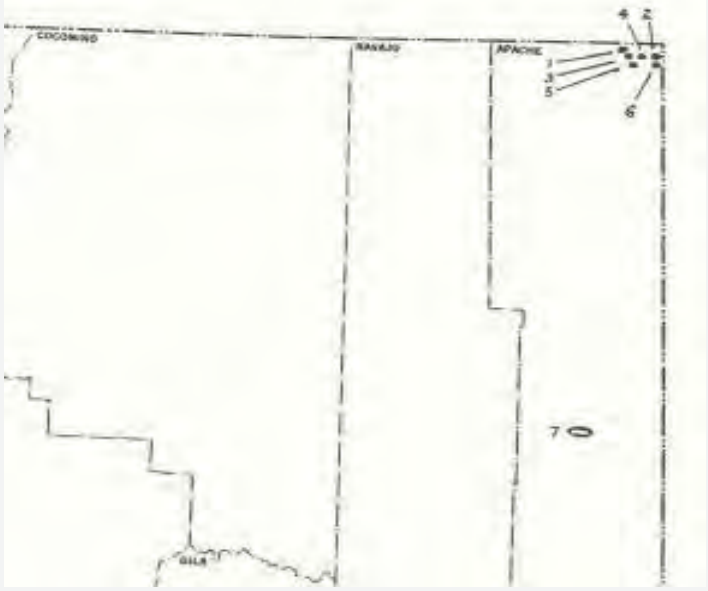
The Shell Oil well indicated gas production of 3,150 thousand cubic feet per day; daily oil production was 3.6 barrels of oil (plus 8.4 barrels of salt water per day) from part of the Pennsylvanian geologic formation, the Hermosa, according to the commission's report, *Oil, Gas and Helium in Arizona, Its Occurrence and Potential*, which sought to encourage further exploration.

A well site on the Navajo Reservation in Apache County, Arizona. The 16-million-acre reservation extends into New Mexico and Utah. Photo courtesy Shell Oil Co.

One candidate for the first Arizona *oil* well, according to the report, was Humble Oil Company's No. 1 E Navajo well, drilled in 1958 near the Shell Oil natural gas well. Although initial oil production was from the same formation (Hermosa), "subsequent production showed increasing gas," and by 1961 it was considered a natural gas well.

"Additional drilling on this structure resulted in completion of three more wells producing mostly gas with some distillate and oil," noted Lee Feemster of the Texas Pacific Coal and Oil Company. "Oil and gas shows were encountered in the Hermosa, Mississippian, and Devonian but to date the production is confined to the Hermosa."

In 1956, the Franco Western Oil Company drilled a well based on a seismic anomaly in the Mississippian formation and found more natural gas. A well completed a year later by Superior Oil Company also produced significant amounts of gas from the Hermosa producing zone.



All of Arizona's oil and natural gas fields are in the northeast corner of the state: (I) East Boundary Butte; (2) Bita Peak; (3) Toh-ah-tin; (4) Unnamed Paradox gas and distillate; (5) Dry Mesa; (6) Unnamed Devonian oil; (7) Pinta dome helium area.

"Encouraging shows of oil and gas were recorded in the Mississippian and Devonian in this test, Feemster noted in the commission report. It was his company, Texas Pacific Coal and Oil, that drilled a test well that finally found commercial quantities of oil in Arizona in 1959.

Founded in 1888, Texas Pacific Coal and Oil Company had established the mining town of Thurber, Texas, and by the early 1900s provided almost half of the coal supply for Texas. The company's Arizona oil discovery, the Navajo No. 1 well, was completed in the extreme northeastern part of the state. The well produced 240 barrels of oil per day from the Mississippian formation at a depth of 5,566 feet, according to Feemster, who added, "The nearest Mississippian production at that time was in the Big Flat field more than 100 miles north in Utah."

In 1967, the Kerr-McGee Navajo No. 1 well revealed an oil-producing geologic anticline about 4,000 feet deep. That well joined the others producing on the Navajo Reservation in Apache County (reservation land includes 16 million acres in Arizona, New Mexico, and Utah). By 2012, the the Navajo Reservation's Dineh-bi-Keyah – "The People's Field" – would produce more than 18 million barrels of oil. Recognizing the importance of new horizontal drilling technologies, in 2013 the Arizona Geological Survey issued a report, *Potential Targets for Shale-Oil and Shale-Gas Exploration in Arizona*, as the state's quest for more oil and natural gas deposits continued.

Guest Article - First Arizona Oil Well - continued

As of March 2016, Arizona had 32 oil and natural gas wells, according to the state commission. Of the 1,129 wells drilled in the state since 1954, almost 90 percent have been dry holes (2014 data). Apache County in the northeast corner of the state remains the only petroleum-producing county.

The American Oil & Gas Historical Society preserves U.S. petroleum history. Become an AOGHS supporting member and help maintain this energy education website and expand historical research. For more information, contact bawells@aoghs.org.

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