



# The Override

Every Landman Wants One

Volume XIV, Issue III

January, 2022



## Presidents Message

**Joe Munsey, RPL**

**President**

Southern California Gas Company

Happy New Year! Welcome back from the holidays and merry making activities. May all your prospects produce hydrocarbons in paying quantities.

Speaking of “paying quantities,” the topic for our joint luncheon with the Los Angeles Basin Geological Society, presented by Daniel C. Steward, Vice President of Beta Operations at Amplify Energy Corp, is “The Exploration History and Remaining Potential of the Los Angeles Basin.” The “remaining potential” piece of the presentation should arouse the curiosity in all LAAPL members to attend this virtual luncheon.

Following recent green energy events in the European Union, it appears the door cracked open for the EU to re-consider natural gas and nuclear power back into the energy needs equation. Either the cry from constituents footing the cost of going green or reality has set in. EU discussions on fossil fuels and nuclear energy is on the proverbial “table.” Fossil fuels may be the comeback kid there in the EU. We shall see how that plays out.

Meanwhile, green and fossil fuel energy still ties into landman and legal work regardless how you cut the energy pie mix here in America and abroad. Both industries need the expertise of land and legal to make it work. Have your “expertise” badge in both industries.

Here is something quick for those land and legal consultants right here in California. Governor Newsom has budgeted \$215M to train displaced oil workers and pay them to cap [Presidents Message continued on page 2](#)



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## Meeting Luncheon Speaker



**THE EXPLORATION HISTORY AND REMAINING POTENTIAL OF THE LOS ANGELES BASIN**

**Daniel “Dan” C. Steward**

is Vice President of Beta Operations at Amplify Energy Corp., responsible for the operation of the offshore Beta field in San Pedro Bay, based in Long Beach. From early 2018 to August of 2019, Dan served as CEO and Co-Founder of start-up Iron Horse Energy, LLC, an acquisition vehicle for mature oil-producing assets in the U.S. onshore. From 1996 to 2017, Dan held various exploration roles of increasing responsibility with Chevron, Noble Energy, Lukoil International Upstream West, and Total E&P, spanning the deep-water Gulf of Mexico (US & MX areas), the west African continental margin, deep-water Black Sea, the Barents Sea, and the San Joaquin basin in Kern County, CA. Dan holds a Bachelors and Masters Degree in Geology from California State University, Bakersfield and a Master of Business Administration from Rice University.





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## Opinionated Corner

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Cliff Moore

Independent, Retired

### WINTER IS WINTER AND SUMMER IS SUMMER

Let's be real here for a minute. You know what, let's be real here for 12 and a half years. There is no way in God's green earth and the greater heavens above that expand well beyond our comprehension of heaven that this planet, this earth, this home is going to totally get rid of any and all fossil fuel use through "exorcisement" alone by 2035. Anybody who really believes that can go wade in flips flops during a tsunami.

If you seriously talk to the big six northern states, those being Minnesota, North and South Dakota, Idaho, Michigan and Wisconsin, you'll find little faith in the "All Electric" grid fantasy.

In 2021 the Oil and Gas industry bounced back from a temporary scare of total elimination by trying to save itself with drastic price reductions when it should have gone on the defensive and waited for winter to show up and prove the unreliability of solar, wind and waterpower's ability to heat the homes of the wary.

For example: Amtrak lost power and forward movement of two of its commercial trains because of Mother Nature. Those forces showed up via still cold, snow and overcast skies. What? No solar without sunshine. What? No wind power without wind. What? No waterpower from ice? The Armageddon-ness of the green preachers failed the litmus test.

I like this planet as much as the next person. Maybe even more so than any tree hugger, but I'm not going to sit out in the desert and hope for rain when

the technology exists to seed clouds and make them precipitate onto an arid plain. Or when water bearing trucks (fueled by gasoline) can come in and drop off H<sub>2</sub>O to a thirsty land. I won't be that stubborn or foolish - especially when my kids and grandkids are parched and looking to me for relief.

No real solution to this planet's survival (livability) is without addressing and recognizing the accomplishments of its past. To move forward we must not ignore the past but recognize how important what we have learned is to what we have gained. One must not tear up all the streets because there are potholes, not to mention the fact most streets are asphalt [think hydrocarbons] base. One must learn to adapt the advances of the past to create an ever stronger and brighter future.

The recognition of the advances of the past onto the realities of the future reminds me of a Lakota parable:

An old shaman who had taken his predecessor under his wing for a promised seven-year tutelage dies after the first year and the student is now looked upon by the tribe as their new advisor and confidant.

In late October the tribe's leaders come to the new shaman asking what to do about the coming winter. The new would-be shaman remembers the old shaman's wisdom, "Never let them see you sweat." The new shaman ponders the question and declares, "Go collect wood."

While they're collecting wood the new shaman calls the U.S. Weather Service and asks about the winter weather where he's told it's going to be cold.

After a week of collecting wood, the leaders come to the newbie and asks, "What now?"

The new shaman declares, "Go collect more wood."

Again, he calls the weather service and asks how cold the winter is going to be. The weather service answers, "It is going to be crazy cold this winter."

After another week of collecting wood, the leaders again come before the medicine man and ask about their future. The shaman goes into his tent and redials the weather service. He asks the weatherman, "How do you know how cold it's going to be?"

The meteorologist answers, "The Indians are collecting wood like crazy!"

Winter and summer temperatures have been regularly charted for well over two and a half centuries. The fluctuations are apparent in every diagram. The scare tactic of the green guys is just that. A scare tactic. When you match science with science there is no real proof of a sustained abhorrent warming trend.

The oil and gas industry will survive this ploy and rebound, as it has, for the next fifty to a hundred years providing we couple with the electric industry, and both realize their necessity for co-existence in order to keep the whole civilized world cool and warm year round.

Don't roll up your electric blankets and shelve your gas-powered AC units just yet. To quote the oft repeated Yogi Berra aphorism, "This aint over till it's over." Batter up!

*Presidents Message* abandoned wells.  
*continued from page 1*

We are assuming Governor Newsom has orphan wells in mind. Before you put a rig on an orphan well and start plugging away, there are other matters to resolve. Who better to handle due diligence research, CalGEM and title research, surface rights negotiations and sorting out legal matters than the landman and legal professionals? Consultants need to start chasing this work down.







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## Lawyers' Joke of the Month

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

During my physical, my doctor asked about my daily activity level, and I gave the following example:

“Well, yesterday afternoon, I waded along the edge of a lake, drank eight beers, escaped from wild dogs in the heavy brush, marched up and down several rocky hills, stood in a patch of poison ivy, crawled out of quicksand, jumped away from an aggressive rattlesnake, and took four leaks behind big trees.”

Seemingly awed by this account, the doctor exclaimed, “You must be one hell of an outdoorsy guy!”

“Nope,” I replied, “Just a really terrible golfer.”

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## LAAPL & LABGS Hold Joint Luncheon

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The Los Angeles Association of Professional Landmen and the Los Angeles Basin Geological Society will hold its joint luncheon in January – Virtually. Please note the date of the luncheon is the fourth Thursday of January.

When: Thursday, Jan 27th [Fourth Thursday of the Month]

Time: 12:00 Noon

Cost: FREE

Meeting Place: <https://csulb.zoom.us/j/85408142587?pwd=ZEN6aXd3dS95YnJpRDhDYjhGT1BPdz09>

Meeting ID: 854 0814 2587

Passcode: 772761

Speaker: Daniel “Dan” C. Steward,  
Vice President, Beta Operations at  
Amplify Energy Corp

Topic: “The Exploration History and Remaining Potential of the Los Angeles Basin”

Contact: To register for “head count” purposes please email LABGS secretary, Joseph Landeros at [landerosjd@gmail.com](mailto:landerosjd@gmail.com)

Online at [www.labgs.org](http://www.labgs.org)



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**Rick Peace, President**  
AAPL Director 2009-2015 | API | BAPL Officer 1990-2014 | CIPA President's Circle  
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## New Members and Transfers

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### Allison Foster 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

William A. Jack, CPL  
President  
Victory Royalty Company  
5025 West Birch Ave  
Fresno, CA 93722  
405.202.0110  
[wjack7318@gmail.com](mailto:wjack7318@gmail.com)

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Joshua P. Wise, CPL  
Managing Member  
Titan Energy-Appalachia, LLC  
703 Market Street  
Parkersburg, WV 26101  
214.514.2048  
[joshua@titanenergyappalachia.com](mailto:joshua@titanenergyappalachia.com)

#### Transfers

John R. "JR" Billeaud, RPL  
Senior Landman  
Berry Petroleum Company LLC  
TO

John R. "JR": Billeaud, RPL  
Land Manager  
CAL-NRG  
1746 F South Victoria Avenue  
Suite 245  
Ventura, CA 93003  
[John.billeaud@CalNRG.com](mailto:John.billeaud@CalNRG.com)  
337-349-5383

#### Corrections

None to Reort



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## December 2021 AAPL Board Meeting Highlights

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### Jason Downs, Chevron Pipeline & Power RPL, Senior Land Representative AAPL Region VIII Director

- AAPL will be increasing dues from \$125 to \$150/year, effective July 1, 2022, as passed by the board in a prior meeting.
- AAPL has hired several new staff, including Michelle Bateman - the Education Program Specialist; Darci Gilbert - new staff accountant; Samantha Sharp - new business development for AAPL.
- The last quarter of 2021, we hosted 11 webinars and 6 in-person events; The new learning management system (LMS) will be live at the beginning of the new year and will be an improvement over what we are currently using to locate all continuing education offerings.
- The process of moving to Scantron for testing has been complete and is a success. All exams are now available at the hundreds of Scantron locations near you once you have been approved for testing.
- We are currently looking at additional options to replace contract center. The forms committee has completed updates to the 2015 JOA and is working on wellbore assignment and override assignment documents for members.
- The technology committee will be reaching out to all associations to see if they need assistance with their web sites; 9 local associations don't currently have websites and this committee is wanting to help get that accomplished.
- The Mentorship committee is currently looking for participants, so if there is any interest please go online and fill out an application. If you are a director, please consider signing up as a mentor.

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## Education Chairman Appointed

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Joseph D. Munsey, RPL, Chapter President, appointed John R. "JR" Billeaud, RPL, Land Manager, CAL-NRG, as Chairman of the Education Chair. While JR never left his LAAPL membership, he returned to the California Oil Patch and LAAPL welcomes him back to the state. LAAPL will be well served having Chairman Billeaud accepting this Chairmanship.



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**Randall Taylor, RPL  
Petroleum Landman**

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# LAAPL Director Report

## Director Report

### AAPL QUARTERLY BOARD MEETING

March 13, 2022

*Hotel ~ Oklahoma City, Oklahoma*

<b>Name:</b>	Jason Downs
<b>Company:</b>	Chevron Pipeline & Power
<b>Email:</b>	jasondowns@chevron.com
<b>Local Association Full Name:</b>	Los Angeles Association of Professional Landmen

**39 Total Local Association Members**

**31 Total Active (“Land Professionals”) AAPL Members within your Association**

#### **Association projects/activities:**

SCHEDULED LAAPL LUNCHEON TOPICS AND DATES:

- January 27, 2022 [4TH Thursday] Annual Joint Meeting with Los Angeles Basin Geological Society
- March 17, 2022 Rebecca Hollis, Director of Business Development, Clean Energy Systems, Inc. “California Carbon Negative Energy – Land Work”
- May 19, 2022 Speaker TBD and Officer Elections
- West Coast Land Institute San Diego has been rescheduled for 2022.

#### **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.
- Working with the Tax Committee on researching the possibility of expanding the Landman exemptions for California Real Estate code

#### **Local news including business activity and day rates:**

Independent work in LA basin is minimal with a few Landmen working project based and quasi-inhouse roles. Broker rate \$50-\$120 an hour with seasoned Landmen charging a premium.

#### **Bylaws Policy and Procedure suggestions:**

None



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**L. Rae Connet, Esq. - President**  
California - (310) 349-0051  
[rconnet@petrolandservice.com](mailto:rconnet@petrolandservice.com)

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## LAAPL Nominations Committee & Duties

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Joseph D. Munsey, RPL, Chapter President, appointed Dale Hoffman, CPL, Retired, Past President of LAAPL, as LAAPL's Nominations Committee Chair. Dale will be seeking out qualified candidates for officers. The officers will serve from July 1<sup>st</sup>, 2022 – June 30<sup>th</sup>, 2023. For all qualified members interested in submitting their names as candidates are encouraged to contact the Committee Chair. Dale can be reached at 907-830-2571 or [dale.e.hoffman@gmail.com](mailto:dale.e.hoffman@gmail.com).

Per Section 7 (7a) of the By-laws, the membership will be provided with a list of nominees for officers for Vice President, Secretary, Treasurer and two (2) Directors at the March meeting. Further nominations from the floor will also be accepted at the March meeting. Members whose names are placed in nomination must give prior consent to be nominated by mail or email up to May 1, 2022. The election will take place at the last regular meeting of the Association this fiscal year, which is scheduled for May 19, 2022.

### *Officers and Duties*

1. The officers of the Association shall be: a President, a Vice President, a Secretary and a Treasurer.
2. The President shall:
  - a. Preside at all meetings,
  - b. Appoint all committees,
  - c. Be Chairman of the Board of Directors, and Ex-Officio member of all committees, and
  - d. Do such other things incidental to the duties of his office.
3. The Vice President shall:
  - a. In the absence of the President, perform all of the President's duties,
  - b. Serve as Program Chairman, and perform other such duties as may be delegated to him by the President, and
  - c. Be a member of the Board of Directors.
4. The Secretary shall:
  - a. Keep the minutes of all meetings,
  - b. Give all notices required by the Constitution and Bylaws or requested by the President, and
  - c. Assist the presiding officer at all regular and special meetings.
5. The Treasurer shall:
  - a. Collect all dues and assessments and maintain records of same,
  - b. Pay such expenses of the Association as shall be approved in the manner specified in Article X,
  - c. Maintain books and record and render reports when directed by the President of Board of Directors, but, in any event, a financial statement shall be rendered to the membership at a regular meeting at least once annually, and prior to turning over the accounts at the end of his term, an audit shall be conducted,
  - d. Safely keep all money and property of the Association and deposit funds belonging to the Association in any bank approved by a majority of the Board of Directors and withdraw funds therefrom by check countersigned by the President or Vice President, and
  - e. Handle such other financial matters as the President shall direct.





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# LAAPL Education Report

*January – May 2022*

*John R. “JR” Billeaud, RPL, Land Manager, California Natural Resources Group  
Education Chair*

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## January

### [Structuring a Deal: Negotiation Strategy and Technique Seminar](#)

Dates: January 13, 2022

Location: Oklahoma City, OK

Speaker: Marita G. Morris, CPL

Credits: 5 CEU; 1 CEU Ethics

### [AAPL RPL/CPL Certification Exam Review - Jackson, MS](#)

Dates: January 19-21, 2022

Location: Jackson, MS

Speakers: A. Frank Clam, CPL; Owen M. Barnhill, CPL; Thomas M. Rucker II, CPL

Credits: 18 CEU; 1 CEU Ethics

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## February

### [Surface Use and Access – Short Course](#)

Dates: February 8, 2022

Location: Houston, TX

Speaker: George R. Schultz, CPL

Credits: 4 CEU

### [Solar Lease Fundamentals](#)

Dates: February 17, 2022

Location: Arlington, TX

Speaker: Phillip Guerra, CPL

Credits: 3 CEU



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[AAPL RPL/CPL Certification Exam Review - Shreveport, LA](#)

Date: February 23-25, 2022

Location: Shreveport, LA

Speakers: A. Frank Clam, CPL; Dorsey T. Roach, CPL; Thomas M. Rucker II, CPL

Credits: 18 CEU; 1 CEU Ethics

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## March

[2022 Mining and Land Resources Institute](#)

Dates: March 2-3, 2022

Location: Stateline, NV (Lake Tahoe)

[2022 Appalachian Land Institute](#)

Dates: March 16-17, 2022

Location: Washington, PA

[LAAPL March 2022 Luncheon](#)

Dates: March 17, 2022

Speaker: Rebecca Hollis, Director of Business Development, Clean Energy Systems

Topic: California Carbon Negative Energy Land Work

[AAPL RPL/CPL Certification Exam Review - Denver, CO](#)

Dates: March 23-25, 2022

Location: Denver, CO

Speakers: Curtis D. Horne, CPL; Owen M. Barnhill, CPL; S. Scott Prather, CPL

Credits; 18 CEU; 1 CEU Ethics

[2022 Gulf Coast Land Institute](#)

Dates: March 30 – April 1, 2022

Location: Lafayette, LA

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## April

[Field Landman Seminar – Vernal, UT](#)

Dates: April 5, 2022

Location: Vernal, UT



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[AAPL RPL/CPL Certification Exam Review - Bakersfield, CA](#)

Dates: April 27-29, 2022

Location: Bakersfield, CA

Speakers: Dorsey T. Roach, CPL; Roger A. Soape, CPL; Thomas M. Rucker II, CPL

Credits: 18 CEU; 1 CEU Ethics

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## May

[Field Landman Seminar – East Lansing, MI](#)

Dates: May 5, 2022

Location: East Lansing, MI

[AAPL RPL/CPL Certification Exam Review - Pittsburgh, PA](#)

Dates: May 18-20, 2022

Location: Pittsburgh, PA

Speakers: Dorsey T. Roach, CPL; S. Scott Prather, CPL

Credits: 18 CEU; 1 CEU Ethics

[LAAPL May 2022 Luncheon](#)

Dates: May 19, 2022

Speaker: TBD

Topic: TBD

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by Mike Flores  
Championship Strategies, Inc

### Statement By WSPA President And CEO

January 22, 2022

### A Look Ahead: Cautious Confidence For A Promising 2022

By Catherine Reheis-Boyd, WSPA President and CEO

#### Statement By WSPA President and CEO

January 22, 2022

#### A LOOK AHEAD:CAUTIOUS CONFIDENCE FOR A PROMISING 2022

By Catherine Reheis-Boyd, WSPA President and CEO

I love the beginning of each year for many reasons. The first is that it gives us all a renewed sense of purpose and motivation in our personal and professional lives – a chance to move on from frustrations of the past and look ahead with optimism. It also allows us to set goals and strategies at work and home, from getting back in shape to excelling at a big work project or achieving a specific professional goal.

As I look ahead to 2022, I am working with my team to set clear strategies that will continue to help the women and men of our industry work with confidence and security knowing they are providing the vital energy that keeps our nation running. While I am confident that we can collectively accomplish a lot this year, caution remains around uncertain future policy actions, which we hope to positively influence using science and energy expertise from our member companies.

As I think about the year in front of us, a few macro trends to watch come to mind, including:

- Rising energy needs for all: The need for energy of all kinds from fuels to power sources will continue to rise to meet the needs of communities in the Western United States and beyond. Affordable, reliable energy is more critical now than ever before to keep our lives and the economy moving successfully, especially as commuting back to the office picks up more and more.
- Confident but cautious economic recovery. As the economy continues to grow back strong from the pandemic, labor and resource availability will drive how prosperous our communities can be. The energy industry broadly must continue to support a strong labor market and supply society with affordable, reliable, sustainable energy.
- Selective sustainability commitments. We can all agree that we want our industry and our world to be as sustainable as possible. Government, business and consumers alike have proven to be selective when demanding environmental progress, and we can expect convenience, cost and energy availability to weigh on sustainability aspirations, often times causing tension between ambition and reality.

With those trends in mind, there's absolutely a lot to be excited about this year. The labor market is strong, companies are continuing to advance sustainability goals and innovation is rapidly coming from all industries, specifically oil & gas. As my team and I think through the trends and issues that will help shape 2022, the following topics will be critical for our industry:

- Ongoing critical need for oil & gas: Even with significant advances in electrification and alternative fuel sources, Americans will continue to need reliable, safe, and affordable oil and gas fuels for decades to come. In California for example, oil & gas demand will increase

significantly through the near and mid-term, with forecasts showing our population will be greater than 43 million by 2040.

- An all of the above energy mix: We believe that a sustainable energy future utilizes all available energy technologies. Instead of unilateral bans that ignore alternative technologies, we must explore all ways to produce safe, affordable and environmentally responsible energy, in-state.
- Continued focus on innovation: Nearly every academic and scientific organization in the world with experts in our work, including Stanford, UCLA and UC Berkeley—all say future progress will be stymied without the type of advancements we are leading on carbon capture, sequestration and storage. Without this work, it will be impossible to reach our state’s current goals, and our industry is leading this charge.
- Industry workforce support: The women and men in California who work in the oil and gas industry today want a cleaner, more sustainable energy future that is fair and equitable for all. That means finding real-world solutions that lead to a cleaner economy while keeping whole our workers, families, and communities. Right now, the oil and gas industry supports more than 365,000 high-quality jobs in California alone, and we need to support them.
- Fighting bans and mandates: WSPA and our industry will continue to fight against policies that enact outright bans and unilateral mandates. We know this strategy does not work and eliminates collaboration and expertise from the brightest minds in energy.

This year will be a success if our industry ensures a seat at the table for collaborative dialogue to meet our energy needs and create a sustainable energy future that works for everyone. I’m choosing confidence over caution, and optimism over concern for a healthy, safe and prosperous 2022 for us all.

### **CONTRA COSTA COUNTY BANS NATURAL GAS TO POWER NEW HOMES**

The Contra Costa County Board of Supervisors approved an ordinance Tuesday that bans natural gas from being used to power new homes and buildings in unincorporated areas of the county.

The ordinance will prohibit the installation of natural gas piping in all new residential buildings and hotels, offices, and retail buildings in unincorporated parts of the county.

The 2019 California Energy Code allows local jurisdictions to establish stricter building codes if that local authority finds it necessary because of local climate, geological, topographical, or environmental conditions.

### **ASSEMBLYMAN INTRODUCES BILL TO SUSPEND GAS TAX FOR SIX MONTHS**

Assemblyman Kevin Kiley ((R-Rocklin) estimates suspending the gas tax would save Californians over 50 cents per gallon at the pump. Californians are currently paying the nation’s highest gas prices. “This bill puts money back into the pockets of families at a time when they need it most,” Assemblyman Kiley said. “Inflation and record gas prices are making our state even less affordable. Californians need relief.”

### **NEWSOM BUDGET WOULD FUND CAL ST. BAKERSFIELD ENERGY CENTER**

The Bakersfield Californian reports that Gov. Newsom’s new budget has allocated \$83M for the construction of an energy innovation center to assist Kern County transition from petroleum to



renewable power. The budget also has \$215M set aside to train displaced oil workers and pay them to cap abandoned wells.

## Quick Hits

### US becomes #1 exporter of LNG

The United States edged above Qatar to become the No. 1 exporter of liquified natural gas in the world last month for the first time, as shipments rose to European buyers facing a supply crunch. While analysts said Qatar and the United States will compete to be the world's largest LNG supplier in the next decade, experts noted that America's position as the top shipper may be short-lived.

### Solar projected to make up almost half of new generating capacity

The Energy Information Administration forecast solar power will make up almost half of new utility-scale power-generating capacity in 2022. EIA projected that 46.1 gigawatts will be added this year – 21.5 GW from solar, up from 15.5 GW of solar additions in 2021 – followed by 9.6 GW from natural gas and 7.6 GW from wind. Most of the solar additions will be in Texas and California.

### West Texas Intermediate posts largest increase since 2009; Brent surges 50 percent

Last year, oil posted some of its highest yearly price hikes since 2009 as global demand recovers. West Texas Intermediate climbed 55 percent – its largest year-over-year gain in more than a decade – while Brent was up 50 percent, its biggest rise since 2016. U.S. oil also ended 2021 with its longest streak of consecutive quarterly increases since 1983.



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## Case of the Month - Right of Way

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### The Dedication Doctrine vs. The Project Influence Rule – Which Valuation Methodology Applies?

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Law Firm of Nossaman LLP*

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Property dedication requirements and eminent domain usually don't mix well: they make for an odd and confusing set of valuation rules. For example, if an agency seeks to condemn property to build a road through an undeveloped area, but that road would be required in order to develop the properties, how should it be valued? Under one set of eminent domain rules (the

Porterville doctrine), the property subject to dedication has little value since it would have to be given up as part of any future development.

Under another set of eminent domain rules (the "project influence rule"), the road project should be disregarded as part of the valuation. These rules create an inherent tension for valuation purposes that courts have struggled to resolve. A recent Court of Appeal decision, *City of Escondido v. Pacific Harmony Grove Dev.*, 2021 Cal. App. LEXIS 706 (Aug. 26, 2021), provides some guidance on what valuation methodology should apply.



#### **Background**

In *Pacific Harmony*, the city filed an eminent domain action to acquire a strip of land for a road extension. The road extension had long been on the city's circulation element of its general plan, and a city ordinance required any owner developing property to dedicate public improvements to conform to the general plan. The city had also previously entered into a development agreement with a nearby hospital pursuant to which the city agreed to extend the road with contributions from the hospital and surrounding developers. With the anticipated road extension coming to fruition, the surrounding properties were up-zoned for industrial use (as opposed to low-density residential).

In the condemnation action, the city argued that the strip of land had nominal value (\$50,000) since it would have been required to be dedicated as part of any future development. The city provided extensive testimony as to why the road dedication was roughly proportional to the impacts of any development (including increased daily trips from a new industrial development, the costs for the owner to build its own access road, etc.). The owner claimed the road was not necessary, as it could utilize an existing road which had sufficient capacity, and therefore the strip of land should be valued based on its industrial highest and best use, resulting in compensation of nearly \$1 million. The owner also argued that the city was liable for precondemnation damages since it waited more than 10 years to condemn after entering into the development agreement which committed to build the road.

The trial court concluded that the strip of land should be valued at its unimproved value since it would have been required to be dedicated as part of any future development, and such a dedication requirement was constitutional (it was roughly proportional and rationally related to any future development impacts). The court also concluded that the "project-effect rule" did not apply, since the dedication was not put in place to impact the value of the property, but instead to mitigate the traffic burdens created by a future development. Finally, the court held that the owner was not entitled to precondemnation damages as there was no unreasonable delay in pursuing the condemnation or the road extension project. The owners appealed.

#### **Court of Appeal Decision**

The Court of Appeal walked through the two competing arguments on valuation: how to take into account the dedication requirements while also disregarding project influence.

#### **Dedication Doctrine**

With respect to the dedication issue, the Court explained that pursuant to the Porterville decision, "when a city would lawfully have conditioned development of property upon the owner's dedication of a portion of the property" to mitigate the impacts of the development, "the fair market value of that portion in a subsequent condemnation action is its value in its undeveloped, agricultural state," rather than in its highest and best developed state." The rationale for this rule is that because the owner could not develop the portion of land subject to dedication, no willing buyer

*Case of the Month - ROW  
continued to page 21*



would purchase that portion for more than its undeveloped value, and therefore that is what the acquiring agency should pay. In order for this valuation approach to apply, the dedication requirement must be constitutional (roughly proportional and rationally related to the impacts from the proposed development), and it must be reasonably probable that the condemning agency would actually impose the dedication requirement as a condition of development.

### **Project Influence Rule**

With respect to the project influence rule, the Court explained that the rule prohibits the fair market value of condemned property from being influenced by the project for which the property is being condemned. For example, if the government is condemning property to build a sewage plant, the government does not get a discount because its project renders surrounding properties less valuable. So if municipal zoning actions were enacted to suppress property values before an intended taking, the zoning law must be disregarded when valuing the condemned property.

These two concepts present an inherent conflict: the dedication approach allows a city's dedication requirements to depress the value of condemned property, while the project influence rule prohibits it. In order to address this conflict, courts look at a "date of probable inclusion" to determine which rule applies. If the dedication requirement arose before the date of probable inclusion, the dedication approach applies, but if it arose after, the project influence rule applies. The date of probable inclusion is determined when a public agency is engaging in a public project for which it intends to acquire property, and it must be probable that the property at issue would be included in that project. Where a general plan and circulation element require a strip of land be dedicated for a roadway if the larger parcel is ever developed, the designation itself does not make it probable that the agency would condemn the strip (and hence does not trigger the date of probable inclusion).

Here, the Court concluded that the dedication requirement was constitutional, as the city did "its constitutionally required homework" to ensure that its dedication requirement was proportional to the impacts caused by developing the property. The Court also agreed that the project influence rule did not apply because the dedication requirement arose as part of the general plan and circulation element, which were in place long before the "date of probable inclusion". The Court held it would result in a windfall to compensate the property owner for an industrial use of the strip of land when the owner would have been required to dedicate that land in order to achieve an industrial development.

With respect to the precondemnation damages claim, the Court explained that the owner is required to demonstrate that the public agency acted improperly by either unreasonably delaying an eminent domain action following an announcement of an intent to condemn or by other unreasonable conduct, and the actions must have resulted in a diminution in value. There must also be some formal announcement or other official act or expression of intent to acquire the property in question (i.e., the agency's activities must go beyond the planning stage to reach the acquiring stage).

Here, the city's entering into a development agreement with the hospital committing to build the road 10 years before filing the condemnation was not unreasonable; the city still had to go through general planning and environmental approvals, and regardless, the owner did not suffer any damages as a result.

### **Take-Aways**

Dedication requirements will continue to create complex, fact-specific inquiries to determine the appropriate valuation methodology. Government agencies will likely continue to require owners to dedicate property for public improvements as part of future developments, and may resort to condemnation when necessary to complete those improvements. Property owners should be informed regarding the conditions or exactions placed on their property, and understand the constitutional factors and valuation methodologies that come into play.

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## Bibikos' At the Well Weekly Round-up

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Mr. Bibikos practices as GA Bibikos, LLC, an oil and gas law practice, with his office in Harrisburg, PA, he can be reached at [gbibikos@gabibikos.com](mailto:gbibikos@gabibikos.com).

Below are various oil and gas cases recited in his blog site [\[gabibikos.com\]](http://gabibikos.com) *At the Well Weekly* which may be of interest for your further inquiry.

### Interesting

- **PA Supremes Say Storage Company on Hook for De Facto Taking.** The Pennsylvania Supreme Court held that landowners' constitutional rights to seek compensation for a *de facto* taking or "inverse condemnation" of their gas rights in a storage field is not limited by whether FERC specifically included the landowners' properties within the certificated buffer zone, meaning an entity generally clothed with the power of eminent need not be invested with eminent domain authority over specific properties in issue to be liable for *de facto* takings. *Hughes v. UGI Storage Co.*, --- A.3d ---, No. 49 MAP 2021, 2021 WL 5562689 (Pa. Nov. 29, 2021).
- **SCOTUS Set to Review EPA's GHG Emission Rules for Power Plants.** The Supreme Court granted certiorari to determine whether the D.C. Circuit properly struck down a Trump Administration rule that rolled back Obama-era GHG emissions standards for existing power plants. *W. Va. v. EPA*, Docket No. 20-1530 (consol.)
- **OOR in PA Says DEP's Weekly Enviro Justice Reports are Public Records.** The Office of Open Records in PA granted a requester's appeal of DEP's order denying access to weekly reports of DEP's Office of Environmental Justice, rejecting the Department's argument that the records reflect internal pre-decisional deliberations that protect agency records from public disclosure. *In re: Mike Ewall v. PADEP*, No: AP 2021-1732, 2021 WL 4943751 (Pa. Off. Open Rec. Oct. 20, 2021).
- **NY Climate Law Kills Bid to Retrofit Power Plants.** NY environmental regulators denied applications to retrofit gas fired power plants with new technology, reasoning that the authorization to revamp fossil-fuel fired power plants would undermine the goal to switch to 70% renewable electricity by 2030, 100% carbon-free electric power production by 2040, and reach net-zero carbon emissions by 2050.
- **Fed. Court in PA Says Collateral Estoppel Bars Adelphia from Relitigating EHB Jurisdiction.** The Middle District of PA precluded Adelphia from arguing that the Third Circuit, rather than the PA Environmental Hearing Board, had jurisdiction over challenges to DEP's approval of a compressor station, holding that the Commonwealth Court's recent decision to the contrary constituted collateral estoppel on that jurisdictional issue. *Adelphia Gateway, LLC v. Pa. Env. Hearing Bd.*, --- F. Supp. 3d ---, No. 1:21-CV-1241, 2021 WL 5494286 (M.D. Pa. Nov. 23, 2021).
- **Constitution Pipeline.** The Second Circuit granted a motion to vacate all prior approvals issued by FERC for the defunct Constitution Pipeline. *N.Y. State Dep't of Env't Conservation v. FERC*, --- Fed. App. ---, No. 19-4338 (2d Cir. November 18, 2021).
- **Mich. Fed. Court Keeps Enbridge Fight.** A federal court in Michigan rejected a motion to remand Michigan's lawsuit seeking a declaration that it properly revoked easements granted to Enbridge Pipeline, holding that the state's claims "arise under" federal law because the scope of the property rights the state asserts necessarily turns on the interpretation of federal law.

*Bibikos*  
*continued to page 24*



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*Michigan v. Enbridge Energy, Ltd. P'ship*, --- F. Supp. 3d ---, No. 1:20-CV-1142, 2021 WL 5355511 (W.D. Mich. Nov. 16, 2021).

## Headlines & Holdings – Appalachia

- **PA Superior Court Poised to Decide *Whether Royalties Payable "At the Well" are Subject to Post-Production Costs***. In *Dressler v. PennEnergy*, No. 2017-10357 (Butler County), *appeal pending* at 635 WDA 2021 (Pa. Super.), a court of common pleas concluded that a lease with similar language (gross proceeds sold at the well) unambiguously authorizes the net-back method to calculate royalties such that lessees may deduct the lessor's proportionate share of lessee's costs of post-production activities before paying royalties. The appeal is pending. On appeal, the industry *amici* filed a brief supporting the lessee and urged the court to conclude that royalties payable to lessors "at the well" are subject to post-production costs. Click [here](#) for a copy of the as-filed brief.
- **Ohio Appellate Court Says *O+G is a Fee Simple Mineral Interest under Dormant O+G Act***. A court of appeals in Ohio concluded that an 1895 conveyance granted the exclusive right for an indefinite period of time to all of the oil and gas under the property such that the interests constitute "mineral interests" under the savings provision of the state's Dormant Mineral Act that were not abandoned or forfeited for inactivity. *Roberts v. Roberts*, --- N.E.3d ---, No. S-19-050, 2021-Ohio-3857, 2021 WL 5029655 (Ohio Ct. App. October 29, 2021).
- **Fed. Ct. in PA Denies Redo of *O+G Market Enhancement Ruling***. A federal court in PA denied a bid to reconsider a prior order and opinion holding that a lessee has no duty to establish a net increase in value of gas sold before deducting a lessor's share of post-production costs, concluding instead that the lessor bears the burden to prove otherwise in a breach-of-contract case. *Tennant v. Range Resources – Appalachia, LLC*, --- F. Supp. 3d ---, No. CV 18-1533, 2021 WL 5040421 (W.D. Pa. Oct. 29, 2021).
- **PA Superior Court Says *Venue for O+G Lease Claims are not Restricted to Location of Leased Properties***. The PA Superior Court upheld an order overruling a preliminary objection (motion to dismiss) to venue in Allegheny County for a dispute over leased properties in Butler County, holding that claims regarding the leases are *in personam* rather than *in rem* and therefore venue may lie in a county other than the one that includes the leased properties. *PennEnergy Resources LLC v. Armstrong Cement & Supply Corp.*, --- A.3d ---, No. 13 WDA 2021, 2021 WL 5118431 (Pa. Super. Nov. 4, 2021).
- **WV Fed. Ct. Tosses Tort Claims for Alleged Underpaid *O+G Royalties***. A federal court in WV dismissed claims against a lessee for misrepresentation and conversion in connection with alleged underpaid royalties under the gist-of-the-action doctrine given that the claims sound in contract. *Southern Country Farms, Inc. v. TH Exploration, LLC*, --- F. Supp. 3d ---, No. 5:21-CV-84, 2021 WL 5147989 (N.D.W. Va. Nov. 4, 2021).
- **OH Court Says *Default Against Some Defendants Doesn't Apply to Lessee in O+G Lease-Busting Bid***. An Ohio court of appeals reversed an order entering default judgment in favor of plaintiffs who invoked lease expiration against an oil and gas lessee and other lessors, concluding that the default judgment against all defendants effectively rendered the lease expired against the lessee even though it appeared to defend. *Zelek v. Tomlinson*, --- N.E.3d ---, No. 2021-Ohio-3973, 2021 WL 5176371 (Ohio Ct. App. Nov. 8, 2021).
- **WV Supremes Resolve Competing *O+G Title Claims***. The West Virginia Supreme Court held that the original owners of oil and gas had good title to the oil and gas versus subsequent purchasers claiming title through a tax deed, holding that the original owners timely paid property taxes such that no lien ever attached and the purported tax sale of the oil and gas rights to the

subsequent purchaser was void. *Orville Young, LLC v. Bonacci*, --- S.E.3d --- No. 20-0030, 2021 WL 5370464 (W. Va. Nov. 18, 2021).

## Headlines & Holdings - Beyond Appalachia

- **TX Railroad Commission Denies Force Pool of Streambed O+G.** A court of appeals in Texas denied an applicant's request under the Mineral Interest Pooling Act **to force pool mineral interests in state-owned riverbed acreage into adjacent units with wells operated by another company**, concluding that (a) the applicant failed to make a fair and reasonable offer to satisfy the threshold requirement of trying voluntary pooling before seeking an order and (b) the 10% risk charge proposed by the applicant was too low given the substantial costs of developing unconventional plays in a portion of the Eaglesville field. *Ammonite Oil & Gas Corp. v. Tex. Railroad Commission*, --- S.W.3d ---, No. 04-20-00465-CV, 2021 WL 4976324 (Tex. App. Oct. 27, 2021).
- **TX Appellate Court Says O+G Reservations did not Convey Surface Covenants.** In a surface-use dispute, a court of appeals in Texas **concluded that reservations in mineral deeds conveyed only the mineral rights and property rights appurtenant thereto but not certain surface covenants**, holding instead that such reservations of the surface covenants could not be established by implication. *Henry v. Smith*, --- S.W.3d ---, No. 02-20-00169-CV, 2021 WL 5506865 (Tex. App. Nov. 24, 2021).
- **TX Court Says Royalties Payable at the Wellhead are Subject to Post-Production Costs.** A Texas appellate court concluded that a **royalty clause unambiguously fixed the wellhead as the valuation point for royalties such that the royalty is subject to post-production costs.** *Shirlaine West Properties Ltd. V. Jamestown Resources L.L.C.*, --- S.W.3d ---, No. 02-18-00424-CV, 2021 WL 5367849 (Tex. App. Nov. 18, 2021).
- **Tx. Fed. Ct. Says "Market Value at the Well" Royalty Clause Authorizes Post-Production Costs.** A federal court in Texas dismissed a proposed class action and concluded **that royalties that are payable based on "market value at the well" despite additional "off lease" and "free gas" provisions authorized the lessee to charge lessors their proportionate share of post-production costs.** *Carl v. Hilcorp Energy*, --- F. Supp. 3d ---, No. 4:21-CV-02133, 2021 WL 5588036 (S.D. Tex. Nov. 30, 2021).



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Since joining Clean Energy Systems (CES) in 2009, Ms. Hollis has served in roles of Project Engineer, Project Manager, and Program Manager. Today, she is the Managing Director of CES' heat exchanger division, HEXCES, and the Director of Business Development for the deployment of Carbon Negative Energy (CNE) plants across California and the United States.

Ms. Hollis has 15 years experience in R&D and product development in the energy, clean tech., automotive, and aerospace industries. She has managed and directed multi-million-dollar contracts for industry and government clients with multi-disciplinary teams to develop innovative advanced technologies. ed company, he successfully closed 70+ deals across six different states, totaling over 370 megawatts of potential projects.

Ms. Hollis holds a BS of Mechanical Engineering from the University of Toledo, an MS in Aeronautical Engineering from the Ohio State University, and an MBA from the University of California, Davis with a focus on entrepreneurship, strategy, and finance.