



The Override

Every Landman Wants One!

Volume XIV, Issue V

May 14, 2022



Presidents Message

JOE MUNSEY, RPL
PRESIDENT

SOUTHERN CALIFORNIA GAS COMPANY

The May meeting sets the mark as the last LAAPL meeting of the 2021-2022 term, which happens to coincide with ending our reign of terror here at LAAPL – it is swiftly nearing its end. There are compelling reasons a solid and sound Executive Board and Committee Chairs are in place, which is to keep a Chapter President in line and steady the ship on course during his/her term. We had excellent support from the Executive Board and Committee Chairs, which we are extremely grateful to have had during this term.

I will refrain from extolling the support from each of the Executive Board members and Committee Chairs as your Co-Chair of the Newsletter/Publishing Committee, Randal Taylor, RPL, limits the real estate space we have as Chapter President to do so. Nevertheless, in alphabetical order and to avoid the perception of favoritism, my thanks to – JR Billeaud, RPL, Education Chair, Marcia Carlisle, Secretary, Jason Downs, CPL, Treasurer, Golf Chair and Region VIII AAPL Director, Mike Flores, Legislative Affairs, Allison Foster, RL, Membership Chair, Ernie Guadiana, Esq., Director and Chapter Legal Counsel, John Harris, Esq., Director, Dale Hoffman, CPL, Nominations Chair, Chip Hoover, Communications/Website Chair, Rich Maldonado, Vice President, and Randall Taylor, RPL, Past President and Co-Chair of the Newsletter/Publishing Committee. I will break the rules – Randall does a yeoman’s task of publishing a very fine association newsletter, bar none.

We had two goals as Chapter President, i.) assisting the Vice President to line up speakers to present [Presidents Message](#) cross-over land and [continued on page 2](#)



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Meeting Luncheon Speaker

“BALANCING THE GRANTOR AND GRANTEE’S RIGHTS TO USE OF EASEMENT:



Brad Kuhn, Esq.



Jillian Friess Leivas, Esq.

Mr. Kuhn is Chair of Nossaman’s Eminent Domain & Valuation Group, guides private and public sector clients through complex real estate development and infrastructure projects – particularly with eminent domain/inverse condemnation, land use/zoning, construction, environmental, and other property and business disputes.

An accomplished real estate and business litigation lawyer across the United States – Brad focuses on the transportation, energy/gas, water, land use development, and telecommunications sectors. His work has been profiled in numerous publications, [continued on page 5](#)



Opinionated Corner

CLIFF MOORE
INDEPENDENT, RETIRED

A DAY IN THE LIFE – A REAL SYNOPSIS OF WOKENESS

Tammy, (29) took Jake, (8) to school in her SUV because society is so bad she can't trust him to walk the .45 mile to school by himself or with the other 12 eight-year-olds going the same way whose mothers are driving them also.

Tammy, having fed Jake a breakfast of handpicked virgin oats and honey with two ounces of almond milk kept at just below room temperature for maximum vitamin release and an amino acid jolt, then drove herself to work.

She works in an environment-controlled office in a cubicle that has a mandated rule for personalization. That means whether you like it or not human resources has determined that a work area decorated with things that make you happy increases your output and exponentially affects production.

Tammy does her standard 8:15 to 4:45 shift Monday through Friday usually without fail. But isn't any happier behind her cubical walls made of engineered plastics held together by a polymer that's petroleum based not bamboo as advertised.

Bojesse, (32), Tammy's husband, has a small business on the boardwalk where he hand paints, waxes and repairs every size of surfboard available in town. Bojesse has a mild cough which is the first sign of a lung disease developed from the first few years he worked without a mask to protect him from the flying fiberglass dust (or even organic material they're made out of today) coming off the boards during sanding. It hasn't gotten any worse but it hasn't gotten any better. Oh. The masks he wears are a petroleum product but it's not required to say such in the materials

listing.

Bojesse skates to work in the summer and catches public transportation during the mild winters in SoCal. His business does well. It took in 70Ks last year. His expenses were right around 52K including the part time employee he took on during Surf Fest last August.

He volunteered to help clean up after the Surf Fest where the participants, exhibitors and consumers/visitors left behind nearly a half million pieces of one-use plastic bottles, utensils and other paraphernalia common to events like that attended mostly by Earth-lovers. Oh, the irony!

He's under sponsorship so more than half of his supplies are donated by outdoor activity companies that import supplies, materials and products from countries like Malaysia, Vietnam, Thailand, etc. famous for barely paying their legal workers and utilizing a massive illegal workforce of children, who are mostly orphans, whom they house in damp rooms above the workshops to keep them from being late for work.

Never mind that. Bojesse is Earth conscious and considers the environment above all else. That's why the family only has one combustion engine vehicle fueled by fossil fuels.

After work Tammy drives to the Whole Foods Market and picks up organic apples, meatballs made from free range chickens. By the way chickens are the nastiest fowl on a farm. They are scavengers and feces eaters. She also purchased some long grain rice that was grown in a nearby garden co-op located on the re-purposed land of a now defunct and long demolished chemical plant.

Said chemical plant had been poisoning the land for the last fifty years. That poison will be in the soil and ground water in trace amounts for the next fifty years even with replacing the topsoil every 3 to ten years. Tammy is planning a healthy meal for Jake and Bojesse. Yeah, right.

While Jake waits for his mother to pick him up, he downs a sugar laden candy

bar before she gets there. Because that's what children do. He naps in the short car ride home because he is crashing from the quick sugar high. Oh yeah, the composite plastic wrapper on the candy bar was developed from a plastic made in a plant that runs on petroleum.

Tammy and Jake arrive home to a climate-controlled duplex they share with some cool neighbors. The patriarch of which also works in the beach community. He sells bicycles whose parts are made from petroleum products. Sure, bicycles help save the air but their initial composition is from fossil fuels.

Upon arriving at home Jake drops his backpack made from recycled plastics just inside the door in their mudroom and Tammy turns on the Birkey water filter to fill up her multi-use chilling containers in her fridge that's for all intents and purposes not all plastic.

So, no matter how you slice it, it all goes back to dinosaur DNA. There is no way modern society is going to quit oil and gas exploration and development. They may sell you a bill of goods about zero fossil fuel use by a certain pre-planned date but it aint real.

I respect the plan to save the planet. The process is hogwash.

It brings me back to an old adage attributed to Oliver Cromwell. Believe in God, yes, but remember to keep your powder dry. In other words, all the high falluting ideas come crashing to the ground if you don't respect the basics of the desk upon which they were drawn.

Presidents Message

continued from page 1

legal opportunities in the alternative energy industry, and ii.) amend the Chapter's by-laws to reflect a changing landscape for LAAPL land professionals and how we define land work.

Goal one – was met.

Goal two – it is in the works. Look for the proposed amendment to the by-laws in the new term whereby LAAPL can grow its future.

Thank you for the opportunity to have served the members of the LAAPL.

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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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 and Committee Members held a virtual and in-person meeting on March 17, 2022, led by Joe Munsey, President. The topics discussed at the meeting were as follows:

Jason Downs, Treasurer, requested approval to prepay the Mickelson Classic Golf event. The event will be held at the new Top Golf venue, El Segundo.

JR Billeaud, Education Chair, gave information regarding the AAPL RPL/CPL exam review in April.

There was a discussion of redesigning the LAAPL logo to become more inclusive with other energy professions.

A suggestion was made to research the new payment option of TicketLeap for LAAPL events.

Jason Downs will be attending the June 2022 AAPL annual meeting in Chicago. Approval was given for event expenses.

Funds were approved for the purchase of a projector screen to be used during the LAAPL meetings as in-person meetings are back!



Scheduled LAAPL Luncheon Topics and Dates

May 19, 2022

Brad Kuhn, Esq. & Jillian Friess Leivas, Esq.

Nossaman, LLP

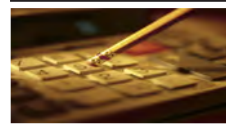
“Balancing the Grantor and Grantee’s Rights to Use of Easement”

September 15, 2022

Luncheon Topic Speaker

TBD

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Treasurer’s Report

JASON DOWNS, CPL
TREASURER
LAND REPRESENTATIVE
CHEVRON PIPE LINE AND POWER COMPANY

As of 3/9/2022, the LAAPL account showed a balance of \$34,505.83

Deposits	\$226.30
Total Checks, Withdrawals, Transfers	\$6,049.99
Balance as of 5/6/2022	\$28,682.14

Call for Dues

Jason Downs, CPL, Chapter Treasurer, is calling for dues which will be due by June 2022 for the 2022 – 2023 year. Cost: still a mere bargain at \$40.00.

Please make payments to:

- Mail: Jason Downs, CPL, 419 Main Street, Box 357, Huntington Beach, CA 92648
- Online: <https://www.laapl.com/onlinepayments/2020-2021-laapl-membership-renewal>

New Feature for the Override

Joe Munsey, RPL and Randall Taylor, RPL, Co-Chairs of the Newsletter Committee are proud to announce a new feature in the Override.

Each issue of the newsletter will now contain an article entitled "News You Otter Know" created by Jerris Johnson of Paramount Brokers in Tulsa, Oklahoma. We hope you enjoy these new articles. Click this article to go to the new addition.

New Members and Transfers

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

None

Lawyers' Joke of the Month

**JACK QUIRK, ESQ.
BRIGHT AND BROWN**

SPEAKING OF GOLF....

When I die, bury me on the golf course, so my husband will visit.

~Author Unknown

I've spent most of my life golfing. The rest I've just wasted.

~Author Unknown

They call it golf because all the other four-letter words were taken.

~Raymond Floyd

Golf is played by twenty million mature American men whose wives think they are out having fun.

~Jim Bishop

It took me seventeen years to get three thousand hits in baseball. I did it in one afternoon on the golf course.

~Hank Aaron

The only time my prayers are never answered is on the golf course.

~Billy Graham

Reverse every natural instinct and do the opposite of what you are inclined to do, and you will probably come very close to having a perfect golf swing.

~Ben 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



**Randall Taylor, RPL
Petroleum Landman**

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Rick Peace, President

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Director Report

AAPL HIGHLIGHTS FROM MARCH 2022 QUARTERLY MEETING March 13, 2022

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

- Directors, please let everyone know that when anyone registers for the RPL/CPL Review Course, please schedule their Scantron exam at the same time to ensure they get a timeslot as soon as possible following their review if they haven't already scheduled their exam. Also, there is a new option available called Live Remote Proctoring if there is not a time slot available at the nearest Scantron testing center.
- At the Annual Meeting this year, we are launching a new feature where we will have local association round tables with a moderator; and each table will have a topic relevant to local association work. Formal invitations will go out to local associations soon. Please sign up for this when registering for the annual meeting and plan to participate in this event.
- The AAPL is developing a Renewable Energy Certificate program to assist members working in this space. The launch date is scheduled for this fall, so please be on the lookout for this additional educational opportunity for members.
- A discussion was had concerning the degree requirements for obtaining the CPL designation. There was not a motion on the floor for the Board to vote on this issue. After further research and analysis by the Certification Committee, no motion was brought forward, and the issue was put to rest.

Luncheon Speakers including multiple cover features in Right of Way Magazine.
continued from page 1

Brad serves as general counsel and sits on the Advisory Board for Mobility 21 and has served as general counsel to the International Right of Way Association (IRWA), where he was elected as President of the Inland Empire Chapter and named as the organization's "Professional of the Year." Mr. Kuhn holds a Juris Doctorate from Chapman University School of Law.

Ms. Friess Leivas focuses her practice on eminent domain laws and regulations. She has experience assisting with the right-of-way process, from pre-condemnation acquisition activities through to preparing pleadings and motions, handling discovery, and assisting with depositions and trial preparation. In addition, Jillian advises clients on environmental issues, land use matters, and other business and property disputes. While in law school, Jillian served as the Editor-in-Chief of the Chapman Law Review and was an active member of Chapman's Alternative Dispute Resolution, Mock Trial and Moot Court Competition teams. Jillian holds a Juris Doctorate from Chapman University School of Law.





Guest Article - Ron Stein

CHINA AND RUSSIA REJOICE AT AMERICA'S QUEST TO GO GREEN

BY RON STEIN

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AMERICA'S UNABATED MOVEMENT TOWARD ELECTRICITY FROM BREEZES AND SUNSHINE HAVE TRANSFERRED THE COUNTRY'S ENERGY DEMANDS ONTO FOREIGN COUNTRIES.

China and Russia are great War historians of WWI and WWII, and they know that the countries that control the minerals, crude oil, and natural gas controls the world! Biden has done an excellent job of relinquishing "CONTROL" for the "green" materials to China and relinquishing "CONTROL" of the crude oil to OPEC and Russia! God help America!

How is it possible that America has allowed itself to become so dependent on authoritarian countries like China, Russia, Venezuela, and Saudi Arabia over the 30 years since the end of the Cold War? The [weaponization of energy by China and Russia](#) has been extensively discussed in the three books co-authored by Ronald Stein and Todd Royal, including the 2022 Pulitzer Prize nominated book "[Clean Energy Exploitations - Helping Citizens Understand the Environmental and Humanity Abuses That Support Clean Energy](#)".

America is in a fast pursuit toward achieving President Biden's stated goal that "[we are going to get rid of fossil fuels.](#)" Today, Biden supports and encourages banks and investment giants to collude to reshape economies and energy infrastructure with their [Environmental, Social, and Governance \(ESG\) divesting in fossil fuels](#) movement. ESG is an extremely dangerous precedent as the American people never voted to give banks this sort of control over our country.

In addition to relinquishing national security to our dependence on China and Russia, that dependency for the fuels to move the heavy-weight and long-range needs of more than 50,000 jets in the world, and more than 50,000 merchant ships circumventing this globe, and the military and space programs, will continue to be the catalyst for shortages and inflation in America.

As the world's eight billion continues to grow its population, the increasing demands for those oil-based products will face shortages of supply with the obvious impact for Americans being continuous shortages and inflation.

China, the world's top greenhouse gas polluter, ignores climate pledges as it tops the list in building new coal plants. It continues to lead all countries in the domestic development of new coal plants, commissioning more new coal capacity in 2021 than the rest of the world combined. China has just over half the number of coal plants in the world and relies on them to generate about 60 per cent of its electricity.

Due to the Biden administration's failure in energy leadership, the United States has never looked weaker and vulnerable to China, Russia, and OPEC which are savouring in their growing control of Americas' energy demands.

The reason much of the European Union became so dependent on Russian oil and natural gas specifically, is green politicians like Angela Merkel of Germany and Boris Johnson of the UK that have done everything in their power to wreck Western extractive industries, with fracking and exploration bans, punitive taxes, onerous environmental processes for drilling new wells and mines, and outlandishly subsidizing electricity generation from breezes and sunshine. Joe Biden is following the actions in Germany and the UK.

America is in the grips of a delusional ideology that makes it incapable of understanding the hard realities of the limitation of just electricity production. Wind and solar cannot manufacture anything, like that manufactured from crude oil.

Green ideology insists we do not need nuclear and that we do not need fracking. It insists that it's just a matter of will and money to switch to all electricity from breezes and sunshine and that the world's 8 billion population can survive without the more than [6,000 products](#) in our economy and lifestyles that are dependent on the oil derivatives manufactured from crude oil.

America has known for years that Vladimir Putin of Russia has been incredibly supportive, both verbally and financially, of environmentalist groups and wealthy individual's efforts to slow or stop crude oil and natural gas exploration and production within the U.S. and European borders.

As reported by the Washington Examiner back in 2018 a [Russian funded environmental group gave millions to anti-fracking](#) groups to stop, curtail or severely weaken US fracking of crude oil and natural gas in states like Texas, North Dakota, Colorado, Oklahoma, Louisiana and Pennsylvania.

*[China and Russia](#)
[continued on page 8](#)*

The Annual



The Bakersfield Association of Professional Landmen (BAPL) and the Los Angeles Association of Professional Landmen (LAAPL) proudly presents our **Annual West Coast Landmen's Institute**, to be held at the **San Diego Marriott Marquis Marina**.

Registration Fees for members of the BAPL or LAAPL are \$225*; \$275* for non-members of the BAPL or LAAPL; \$100* for "Independents*" \$150* for non-member "Independents" (*\$50 more if received after September 7th). These registration fees include attendance to the Institute, the Wednesday Reception at *Roy's San Diego Waterfront*, Thursday Lunch and Dinner poolside at the Marquis, Breakfast each morning, and break refreshments.

*In this context, an Independent Landman is defined as any individual who receives compensation for their services, either on a per diem or hourly basis (1099), and who does not routinely employ other Landmen to work on a contract basis for their benefit. In other words, Brokers and Independents who have assistants do not qualify as an Independent Landman for the discounted registration fee.

We anticipate AAPL will award Nine (9) RL Continuing Education Credits, RPL Continuing Education Credits or CPL Recertification Credits for participation in this Institute. AAPL Attendance Affidavits will be available at this event (see confirmed Speaker Line-up on next page).

We have a limited number of rooms secured a rate of \$259 per night at *San Diego Marriott Marquis Marina*, but you must book your reservation by Wednesday, September 7th to take advantage of this reduced rate, and room availability is not guaranteed after this date! **Independents: Share a room with another and save!**

Registrants should make overnight accommodations directly with ***San Diego Marriott Marquis Marina***.

You can reserve your room by calling the hotel at 877.622.3056 and reference the code for the West Coast Landmen's institute or online at: <https://book.passkey.com/go/LandmensInstitute>

Individuals will be responsible for their own reservations. You have 72-hours prior to your arrival date in which to cancel your reservation. *All no shows and cancellations within this period will be charged to the individual.* We have guaranteed a minimum number of rooms each night, so we ask you to consider using our block of rooms at ***San Diego Marriott Marquis Marina*** if you plan to rent your lodging in the area for this event. Rooms rates are the same three (3) days prior and three (3) after our event, based on availability.

We are reserving a limited number of tee times for golf on Wednesday afternoon at Aviara CC in Carlsbad, California prior to the WCLI for our participants (\$TBD per player and includes cart, range balls, box lunch and adult refreshments). Please remember to complete the attached Sponsor/Registration form if you wish to play golf or attend the WCLI.

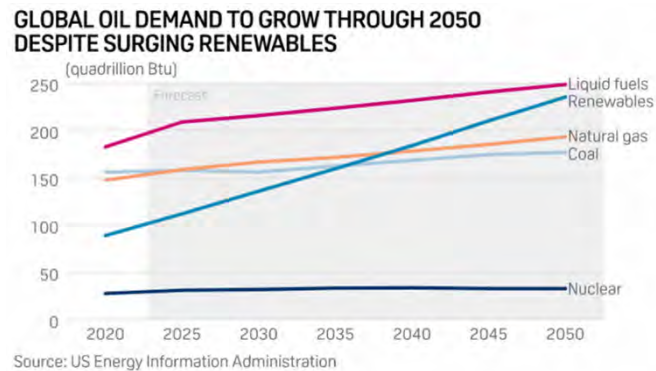
[China and Russia](#)
[continued from page 6](#)

For all his fawning over Putin, Donald Trump, back in 2018, defied diplomatic protocol to call out Germany publicly for its dependence on Moscow. “Germany, as far as I’m concerned, is captive to Russia because it’s getting so much of its energy from Russia,” **Trump said**. This prompted Germany’s then-chancellor, Angela Merkel, who had been widely praised in polite circles for being the last serious leader in the West, to say that her country “can make our own policies and make our own decisions.”

The result has been the **worst global energy crisis** since 1973, driving prices for electricity and gasoline higher around the world. It is a crisis, fundamentally, of inadequate supply. But the scarcity is entirely manufactured.

Americas’ green goals are incredibly supportive toward China and Russia that continue to benefit in their quest for domination for the supply of fossil fuels, and the exotic minerals and metals needed to support the growing demands of society from the products and fuels that are manufactured from crude oil.

While our current influential energy officials, thought leaders, and research publications believes liquid fuels are dying, the real-world data tells a vastly different story. The graph from the EIA — the U.S. Energy Information Administration shows projected U.S. energy consumption from now until 2050.



While America’s unabated movement toward electricity from breezes and sunshine have transferred the countries’ fossil fuel demands onto foreign countries, the data from the U.S. Energy Information Administration (EIA) shows that the growing demands of societies for petroleum-based liquid fuels will remain strong — and in fact grow — through at least 2050 as America, like much of the European Union, places more reliance on hostile foreign powers for its energy security.

Announcement: **Larry Elder**, former candidate to replace Governor Gavin Newsom in the 2021 California gubernatorial recall election, interviews Ronald Stein, a Pulitzer Prize-nominated author, internationally published columnist, energy consultant, engineer, and policy adviser for the Heartland Institute about the “Clean Energy Scam We All Fell For”. For the 24-minute **Epoch Times TV video interview**, check out the link: <https://drive.google.com/drive/folders/1XnRtvoRWtY Eri9kR19JDQmj9vESboFNX>

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Have An Exclusive Easement?

“Balancing the Grantor and Grantee’s Rights to Use of Easement: A Case Study of *18131 Ventura Blvd, LLC v. 5223 Lindley, LLC*”

LIVE & VIRTUAL PRESENTATION

Thursday, May 19, 2022 | Noon to 1:15 PM

SPEAKERS:



Brad Kuhn, Esq, Partner
Nossaman LLP



Jillian Friess Leivas, Esq.
Associate Nossaman,
LLP

Cost: Virtual [Free]

**Luncheon: \$25.00 with reservation
\$30.00 w/o reservation**

Please Register Here! [Use Below Link]

Join Go to Meeting [Use Below Link]

**Location: The Grand Long Beach
4101 E. Willow Street
Long Beach, CA 90815**

MEET OUR SPEAKERS

Mr. Kuhn is Chair of Nossaman’s Eminent Domain & Valuation Group, guides private and public sector clients through complex real estate development and infrastructure projects – particularly with eminent domain/inverse condemnation, land use/zoning, construction, environmental, and other property and business disputes.

An accomplished real estate and business litigation lawyer across the United States – Brad focuses on the transportation, energy/gas, water, land use development, and telecommunications sectors. His work has been profiled in numerous publications, including multiple cover features in Right of Way Magazine.

Brad serves as general counsel and sits on the Advisory Board for Mobility 21 and has served as general counsel to the International Right of Way Association (IRWA), where he was elected as President of the Inland Empire Chapter and named as the organization’s “Professional of the Year.” Mr. Kuhn holds a Juris Doctorate from Chapman University School of Law.

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**REGISTER FOR
MEETING HERE**

**GO TO THE
MEETING HERE**



NEWS YOU OTTER KNOW - APRIL 2022

Jerris Johnson, CPL - jjohnson@paramount.io
for questions, commentary, and invitations to speak



We can and should do a better job of educating our neighbors.

We should explain in simple terms, without a bunch of charts and condescending verbiage, how oil comes from solid rock 2 miles below the surface to become a gallon of gasoline at the pump, and there are many varying participants in that process.

They need to understand that the credit card swiped at the Chevron/Exxon/Shell/BP pump does NOT send all their money directly back to the Chevron/Exxon/Shell/BP HQ, where the executives share the proceeds.

They need to be reminded that these are public companies that are not owned by a small group of greedy owners in a conference room. In fact, if our friends, family, and neighbors have any kind of 401K or retirement savings, they are likely part owners in these companies as well. They are also going to benefit from a brief period of higher earnings.

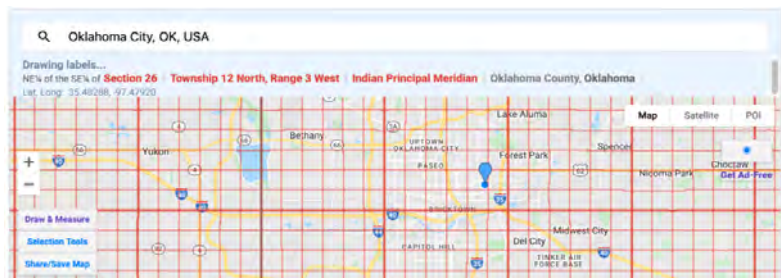
When politicians decide to call out oil companies on their “record profits” and “price gouging,” I hope the executives and public relations folks take the opportunity to explain these points.

NBC News is asking the right question. As you likely know, President Biden has announced plans to release 1 million BOPD for six months. However, what will this action do, and what will it NOT do?

["Will tapping the Strategic Petroleum Reserve lead to lower gas prices?" – NBC News – https://nbcnews.to/3K7G0pX](https://nbcnews.to/3K7G0pX)

- “The reserve can hold more than 700 million barrels to be used ‘to counter a disruption in commercial oil supplies which could threaten the U.S. economy,’ according to the Energy Department.”
- “Up to 4.4 million barrels of oil can be extracted from the reserve a day for a maximum of 90 days. Once the president calls for a release, it can take at least 13 days for the oil to go out for delivery, according to the Energy Department. The first barrels in the upcoming release are set to hit the market in May.”
- **To answer the question, from Biden:** “It could come down the better part of, you know, anything from 10 cents to 35 cents a gallon. It’s unknown at this point.”
- “1 million barrels accounts for just 5 percent of the daily oil consumption in the U.S. Last year, the U.S. consumed 19.78 million barrels of oil a day, according to the U.S. Energy Information Administration.”

The tech tip you otter know: The ability to see Section Township Range in Google Maps. Search by city or address and see the PLSS in Google Maps. Or plug in the S-T-R to see where that is in Google Maps. The service is free, but ad-supported. If you want additional features, you can become a “monthly contributor” (pay a subscription fee.) <https://www.randymajors.org/township-range-on-google-maps>



**MICKELSON GOLF CLASSIC
AND
FIELD LANDMAN SEMINAR**
*Jason Downs, CPL
Golf Chair*

LAAPL is pleased to announce that AAPL will host a Field Landman Seminar “FLS” at the Top Golf facilities prior to the Mickelson “Top” Golf Classic on Thursday, August 25th. Detail and sign up available for the FLS via AAPL website: [Field Landman Seminar \[personify.landman.org\]](http://personify.landman.org). AAPL members are free, non-members are provided a discount opportunity to sign up for AAPL, this is a two-hour credited luncheon seminar.

LAAPL cordially invites you to participate in the 2022 LAAPL Mickelson "TOP" Golf Classic fundraiser to be held at TopGolf in El Segundo, California. Join us for a day of fun and the opportunity to make positive changes in the lives of area youth. LAAPL will donate the net proceeds realized from the tournament to the R.M. Pyles Boys Camp (www.pylescamp.com [pylescamp.com]), thus we encourage you to “sponsor” generously. This tournament honors the late William A. Mickelson, a respected leader in LAAPL/BAPL, the California Oil & Gas Industry, and truly a prowess on the golf course.

The Early Birdie discount for registration has been extended until June 3rd. Enter **early birdie** for 15% off. Event details, sponsorship, and registration tickets are available via Ticketleap: [Mickelson "Top" Golf Classic Tickets in El Segundo, CA, United States \(ticketleap.com\) \[laapl.ticketleap.com\]](http://Mickelson \)

3 hours of game play, free rental clubs, dedicated hostess, buffet dinner Fiesta Fajita's with bottomless soda, ice tea, and water, Top Contender & Team/Live leaderboard scoring.



THURSDAY, AUGUST 25 2022

Check in: 2:30 pm

TOPGOLF

400 S Pacific Coast Hwy
El Segundo, CA 90245

Please register through Ticket Leap and/or contact me (jasondowns@chevron.com) by email for check payments, camera-ready artwork, additional payment options, or questions. Field Landman Seminar requires a separate sign-up through the AAPL website via the link above.

**AMERICAN ASSOCIATION OF PROFESSIONAL LANDMEN HORIZON BREAKFAST
JUNE 16, 2022, CHICAGO, IL**

This special event was created to celebrate and honor a trailblazing female land leader in the industry who has distinguished herself in her career, in the profession and has supported AAPL and its mission. The Blankenship Family Horizon Award is the product of a fund set up decades ago by former AAPL President Wayne Blankenship (1975) to honor his wife, Mary Blankenship, upon her passing. Originally, this fund supported the AAPL women's auxiliaries for many years until they ceased to exist in the early '90s. To continue the Blankenship legacy of generosity, the AAPL Educational Foundation established the Blankenship Family Horizon Award in 2019 to honor female industry leaders and to be presented each year at AAPL's Annual Meeting.

2022 Blankenship Family Horizon Award Recipient: Beverly Cunningham, former LAAPL member and Conoco Inc. land manager in Ventura, CA was the unanimous vote getter among this year's candidates and plans to attend the breakfast from Ponca City, OK where she has been retired since the early 90's.



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Happy 203rd Birthday, Colonel Drake!

At the Core

A favorite slice of oilpatch lore,
Deals with an apple – more precisely – the core.
Took food to the well, did drillers of yore,
And dined best they could on the drilling rig floor.

They'd show up for work with a lunch pail or sack,
And a Rome or Delicious or maybe a Mac -
For apples were tasty and easy to pack,
And they made a nice lunch or an afternoon snack.

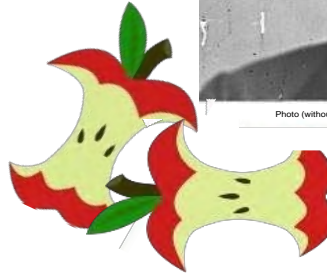
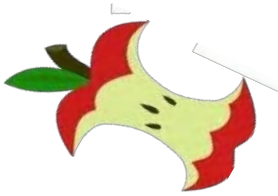
Each day after meals, over shoulder they'd fling,
The old apple core, and then early next spring,
When the snow melted and robins would sing,
New trees would sprout 'round the well in a ring.

When you're out in the woods, scouting old wells,
Climbing up hills and marching down dells,
Remember this bit of lore you've heard tell:
It's there in the circle where apple trees dwell.

- Kathy J. Flaherty, 2015
(More Oily Odes, in press)



Photo (without embellishments) courtesy of PHMC, Drake Well Museum, Titusville, PA.



REGULATION. LITIGATION. PUBLIC OPINION.

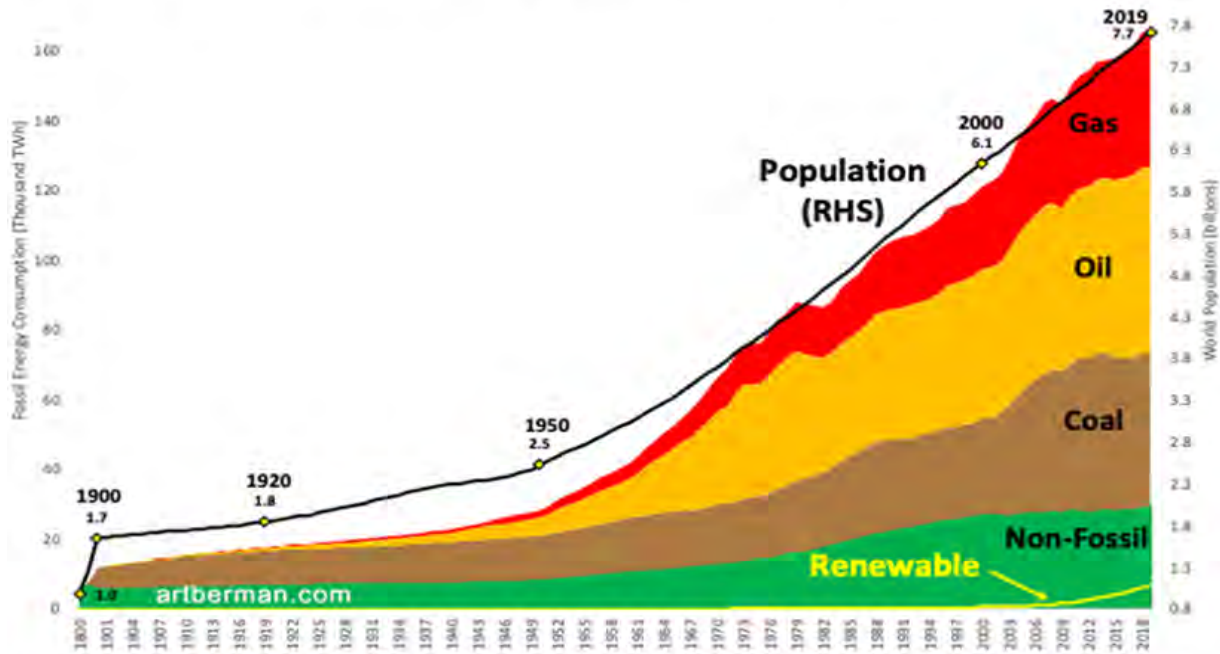
When forces work against industry, we are the force on your side. Day Carter Murphy — working to advance your oil and gas interests all day, every day.

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INTERESTING CHARTS

Provided to *The Override* by James R. Halloran who can be reached by contacting him at jameshalloran8969@gmail.com. Mr. Halloran provides daily [almost] insight into the energy industry.

**Non-fossil energy sources only capable of supporting population of ~2 billion today
Tripling that capacity only supports ~6.0 of 9.8 billion projected 2050 population**



Source: Our World in Data, UN & Labyrinth Consulting Services, Inc.

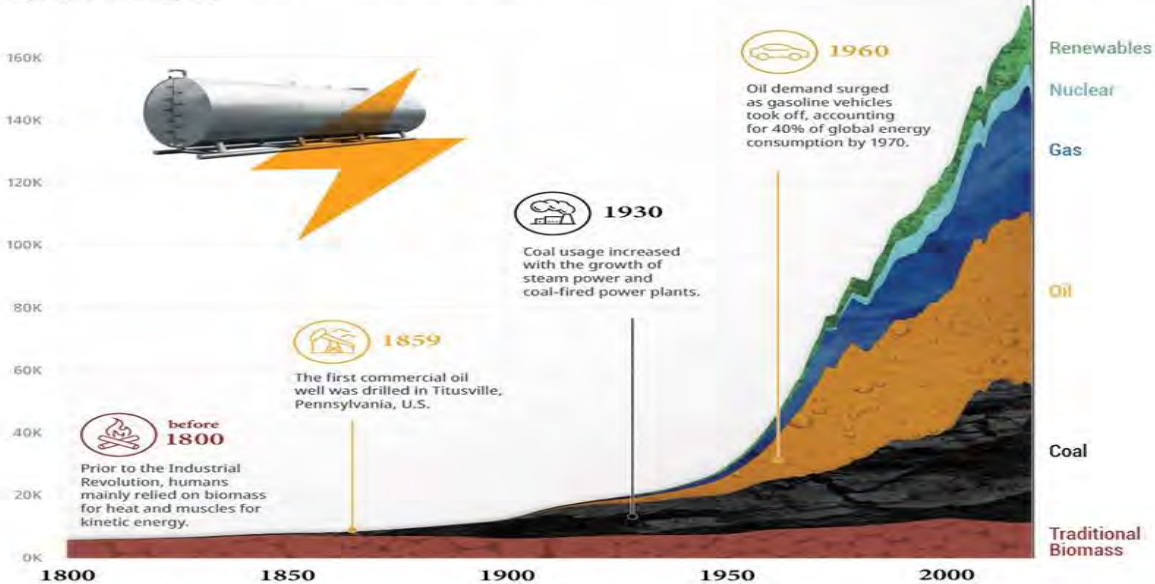
Labyrinth/Climate Change/World Population since 10000 BCE

THE HISTORY OF Energy Transitions

The economic and technical advances over the last 200 years have transformed how we produce and consume energy.

Here's how the global energy mix has evolved since 1800.

Global Primary Energy Consumption by Source 1800-2020
180K Terrawatt-hours (TWh)



Source: Vaclav Smil (2017), BP Statistical Review of World Energy and Our World in Data

LAAPL 2022-2023 Election Ballot



2022-2023

OFFICERS and DIRECTORS¹

Meeting Date: May 19, 2022

Nominations Chair, Dale Hoffman, CPL, presents the following candidates¹ for officers to serve from July 1, 2022-June 30, 2023. **Additional nominees may be submitted to the Nominations Chairman at dale.e.hoffman@gmail.com or by calling 907-830-2571 to be included on the final candidate's list, which will be published in the May newsletter.** Officers will be elected by a vote of the membership in attendance on May 19, 2022. Nominations will also be accepted from the floor at that time.

PRESIDENT

- Richard Maldonado² Vice President
Spectrum Land Service

PAST PRESIDENT

- Joseph D. Munsey, RPL^{3 & 4} Senior Land Advisor
Southern California Gas Company

CANDIDATES:

VICE PRESIDENT-VOTE FOR ONE

- Sarah Downs, RPL Land Advisor
Southern California Gas Company
- _____

SECRETARY-VOTE FOR ONE

- Marcia Carlisle Land Analyst
The Termo Company
- _____

TREASURER - VOTE FOR ONE

- Jason Downs, CPL Land Representative
Chevron Pipeline & Power
- _____

DIRECTORS - VOTE FOR TWO

- John Harris, Esq. Partner
Casso & Sparks, LLP
- Ernest J. Guadiana, Esq. Partner
Elkins Kalt Weintraub Reuben LLP
- _____

Per the LAAPL Bylaws, I **am an Active Member** of the Association and eligible to vote in annual elections.

Write-in candidates **MUST** have given their prior consent for nomination.

¹Per Section 7(7)(a) prior to the regular meeting scheduled nearest to April 15th of each membership year, the membership will be provided with a list of the nominees for offices of Vice President, Secretary, Treasurer and the two (2) Directors.

²Per Section 7(3) the Vice President shall succeed to the office of the President after serving his or her term as Vice President and shall hold the office of President for the next twelve (12) months.

³Per Article 8 (2) the outgoing President shall serve as Past President.

⁴Per Article 8 (2) the outgoing President shall serve as a Director.



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LAAPL Education Report

May – September 2022

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

May

Event	Dates	Location	Speakers	Credits
AAPL RPL/CPL Certification Exam Review - Pittsburgh, PA	May 18-20, 2022	Coraopolis, PA	Curtis D. Horne, CPL; Dorsey T. Roach, CPL; S. Scott Prather, CPL	18 CEU; 1 CEU Ethics
LAAPL May 2022 Luncheon	May 19, 2022	Long Beach, CA	Brad Kuhn and Jillian Friess Leivas (Nossaman LLP)	1 CEU
Field Landman Seminar	May 19, 2022	Bridgeport, WV	TBD	2 CEU
Solar Lease Fundamentals	May 24, 2022	Live Webinar	Phillip Guerra, CPL	3 CEU
Consents to Assign and Preferential Rights	May 25, 2022	Live Webinar	Robert Kiefaber	1 CEU
Held by Production and Royalty Issues	May 26, 2022	Live Webinar	Robert Kiefaber	6 CEU

June

Event	Dates	Location	Speakers	Credits
Analyzing Retained Acreage and Continuous Development Provisions	June 1, 2022	Live Webinar	Zachary Gaver	1 CEU
Royalty Deductions	June 2, 2022	Live Webinar	Marlin K. Brown, CPL	3 CEU
Comparison of New Mexico and Texas Oil and Gas Law	June 8, 2022	Live Webinar	Bradley Gibbs	1 CEU
2022 AAPL Annual Meeting	June 15-18, 2022	Chicago, IL (Hilton Chicago)	Various	17 CEU
Solar Lease Fundamentals	June 21, 2022	Live Webinar	Phillip Guerra, CPL	3 CEU
Surface Use: Issues from Both Sides of the Fence	June 22, 2022	Live Webinar	Robert Kiefaber	1 CEU
Understanding Petroleum Economics	June 28, 2022	Live Webinar	Dwayne Purvis	6 CEU; 1 CEU Ethics
Earth, Wind, Solar	June 29, 2022	Live Webinar	TBD	1 CEU

July

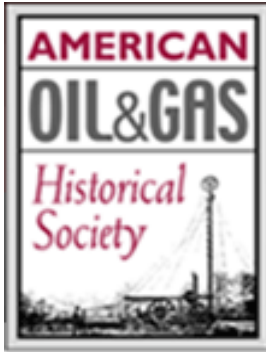
Event	Dates	Location	Speakers	Credits
AAPL's Code of Ethics and Standards of Practice - III	July 6, 2022	Live Webinar	George R. Shultz, CPL	1 CEU Ethics
Field Landman Seminar - Keystone, CO	July 14, 2022	Keystone, CO	TBD	3 CEU
AAPL RPL/CPL Certification Exam Review – Shreveport, LA	July 19-21, 2022	Shreveport, LA	A. Frank Klam, CPL; Dorsey T. Roach, CPL; Thomas M. Rucker II, CPL	18 CEU; 1 CEU Ethics
Solar Lease Fundamentals	July 19, 2022	Live Webinar	Phillip Guerra, CPL	3 CEU
Asserting Dominance: Do Renewable Developers Have to Accommodate Oil & Gas Surface Use?	July 20, 2022	Live Webinar	Bradley Gibbs	1 CEU
Pipelines and Easements	July 27, 2022	Live Webinar	Bradley Gibbs	2 CEU

August

Event	Dates	Location	Speakers	Credits
Current Issues in Louisiana Oil and Gas Law	August 3, 2022	Live Webinar	Patrick Schenkel	1 CEU
Solar Lease Fundamentals	August 16, 2022	Live Webinar	Phillip Guerra, CPL	3 CEU
Leasing Under Texas Roadways	August 24, 2022	Live Webinar	Bradley Gibbs	1 CEU
Field Landman Seminar	August 25, 2022	El Segundo, CA	TBD	2 CEU
2022 Southwest Land Institute	August 30, 2022	Arlington, TX	TBD	TBD

September

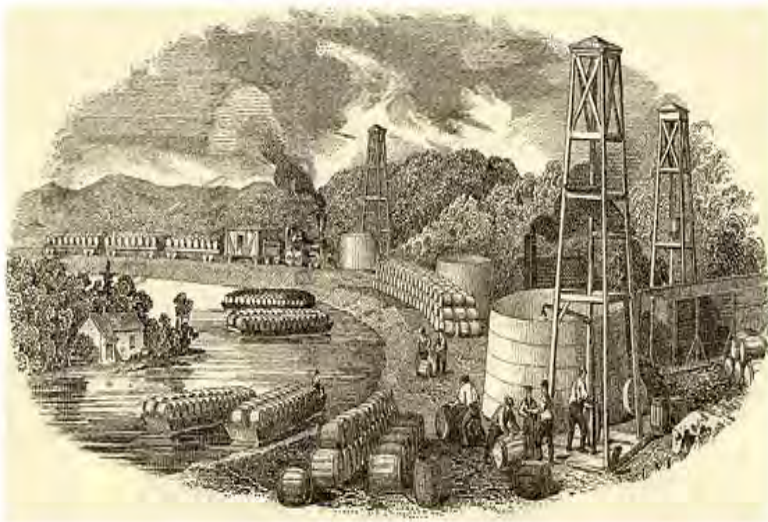
Event	Dates	Location	Speakers	Credits
Solar Lease Fundamentals	September 13, 2022	Live Webinar	Phillip Guerra, CPL	3 CEU
Navigating Mineral & Royalty Disputes	September 14, 2022	Live Webinar	Robert Kiefaber	1 CEU
Over and Under Payment of Royalties	September 28, 2022	Live Webinar	Robert Kiefaber	1 CEU
West Coast Land Institute	September 28-30, 2022	San Diego, CA	TBD	TBD



History of the 42-Gallon Oil Barrel

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Soon after America’s first oil discovery in 1859, oilmen met in northwestern Pennsylvania and decided a 42-gallon barrel was best for transporting oil.



By the 1860s, barges floated barrels of oil down the Allegheny River to Pittsburgh to be refined into a highly demanded product – kerosene for lamps. Image from an early stock certificate.



The 42-gallon standard was adopted by the Petroleum Producers Association in 1872.

When filled with oil instead of fish or other commodities, a 42-gallon “tierce” weighed 300 pounds. The 42-gallon oil barrel was officially adopted in 1866. Today, a barrel’s refined products include about 20 gallons of gasoline, 12 gallons of diesel and 4 gallons of jet fuel and other products like liquefied petroleum gases and asphalt.

In August 1866 a handful of America’s earliest independent oil producers met in Titusville, Pennsylvania, and agreed that henceforth, 42 gallons would constitute a barrel of oil. Pennsylvania led the world in oil production as demand for kerosene soared.

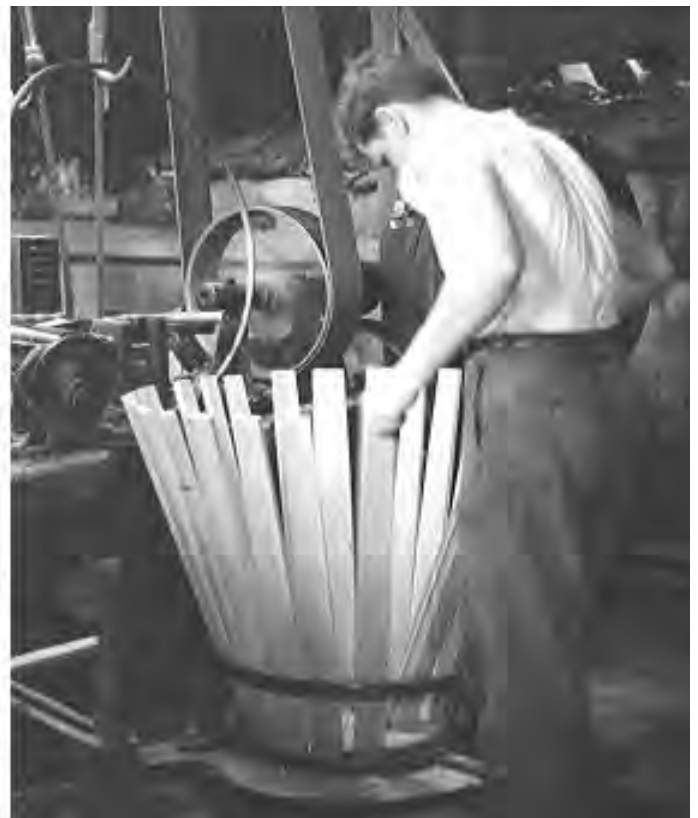
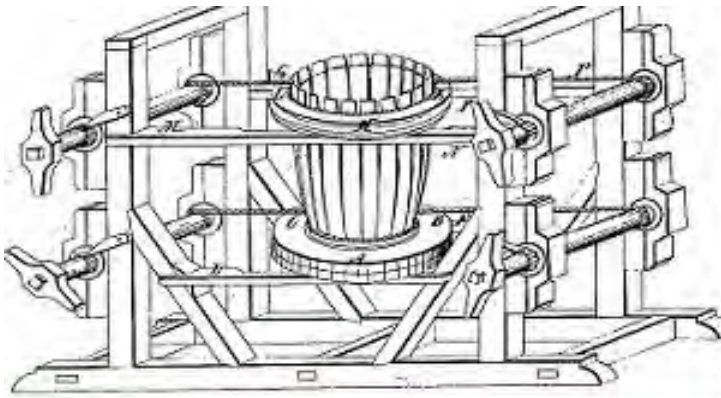
Although pipelines would later challenge the oil region’s teamsters, the business of moving oil depended mostly on men, wagons, horses, flatboats, and barrels.

To reach railroad station and docks, teams of horses pulled wagons carrying as many as eight barrels of oil. Rugged northwestern Pennsylvania terrain and muddy roads added to transportation problems.

Meanwhile, as derricks multiplied, forests along Oil Creek were reduced to barrel staves by recently introduced barrel-making machinery. Hoop mills operated day and night supporting cooperages that sprang up to join in the oil boom in what would later be called “the valley that changed the world.”

Why a 42-gallon Oil Barrel?

Long before England’s King Richard III defined the wine puncheon as a cask holding 84 gallons and a tierce as holding 42 gallons, watertight casks of many sizes were crafted by “tight” coopers. Their guild, the Worshipful Company of Coopers, prescribed the manner of construction. Lesser skilled craftsmen (known as slack coopers) made casks, barrels, and pails for dry goods.



Technologies for making watertight casks replaced “tight” coopers and their guild of Worshipful Company of Coopers. Standard Oil will introduce a steel version of the 42-gallon oil barrel in 1902 with the same traditional bilged, cask-like appearance.

By around 1700 in Pennsylvania, practical experience and custom had made the 42-gallon watertight tierce a standard container for shipping everything from eel, salmon, herring, molasses, soap, butter, wine and whale oil. The 42-gallon barrels became familiar 19th century containers.

Then came Edwin L. Drake’s 1859 oil discovery at Titusville, the first commercial U.S. oil well. The petroleum boom that followed it consumed wooden tierces, whiskey barrels, casks and barrels of all sizes.

When filled with crude oil instead of fish or other commodities, a 42-gallon tierce weighed more than 300 pounds – about as much as a man could reasonably wrestle. Twenty would fit on a typical barge or railroad flatcar. Bigger casks were unmanageable and smaller were less profitable.

Contemporary photographs show cooperages’ prodigious response to the new demand. Within a year of Drake’s discovery, oil barrels were commonly considered to hold 42 gallons according to “The Oil Fountains of Pennsylvania” in *Littells’ Living Age* of September 1860.

By 1866, these abundant tierce-sized barrels were the logical choice to become the industry’s standard measure.

The 42-gallon standard oil barrel was officially adopted by the Petroleum Producers Association in 1872 and by the U.S. Geological Survey and the U.S. Bureau of Mines in 1882.

Pennsylvania’s “valley that changed the world” also has connections to college football’s Heisman Trophy. Among the late 19th century Titusville companies, the Oberly & Heisman cooperage on Bridge

Street supplied 42-gallon barrels for the oil trade – providing Michael Heisman’s son John an afterschool job.

John Heisman played varsity football for Titusville High School as a guard on the varsity team from 1884 to 1887. He graduated in 1887 and went on to become the legendary football coach for whom the Heisman Trophy is named.

Standard Oil “Blue Barrel” Myth

Not long after forming the Standard Oil Company in Cleveland, Ohio, in 1870, John D. Rockefeller focused on efficiency and growth for his new company.

Instead of buying oil barrels, Standard Oil bought tracts of oak timber, hauled the dried timber to Cleveland on its own wagons, and built the barrels in its own cooorage. Standard’s cost per wooden barrel dropped from \$3 to less than \$1.50.

A persistent oilfield myth says that the abbreviation “bbl” for a barrel of oil resulted from Standard Oil Company’s early practice of painting their barrels blue – bbl for “blue barrel.”

However, while Ida Tarbell’s controversial 1904 *History of Standard Oil Company* acknowledged the “holy blue barrel,” the abbreviation “bbl” had been in use before the 1859 birth of the petroleum industry.

In the early 19th century, wooden barrels of all capacities were common containers of trade: hogsheads, puncheons, tierces, butts, tuns, and other long since forgotten terms.

Shipping manifests reveal that quantities of honey, rum, whale oil, and other commodities were shipped by the “bbl” – well before John D. Rockefeller and Standard Oil’s blue barrels. For today’s industry, the abbreviation simply signifies a 42-gallon (159 liters) unit of measure...of any color.

Learn about the 55-gallon steel drum at [Nellie Bly Oil Drum](#).



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Case of the Month - Right of Way



BALANCING THE GRANTOR AND GRANTEE'S RIGHTS TO USE AN EASEMENT

*Jillian Friess Leivas, Esq., Associate
Law Firm of Nossaman LLP*

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Some easements will contain express language that delineates the respective rights of the grantor and grantee to make use of the easement. Other times, even absent express language, a grantor can be prevented from using an easement if such use would unreasonably interfere with the rights of the easement holder. For further discussion of an example when express easement language is not needed to limit the use of the easement by the grantor, check out our prior post entitled “Utilities Have the Right to Remove Trees Within an Easement.”



However, what happens when the language is ambiguous? The unpublished case of 18131 Ventura Blvd, LLC v. 5223 Lindley, LLC (2021) No. B304458, analyzed what the easement language of “exclusive perpetual easement” means as to the respective rights of the grantor and grantee.

Background

In this case, there are two adjacent commercial parcels – the Ventura property and the Lindley property. In 1989, the Lindley property granted an “exclusive perpetual easement” to the Ventura property across three feet of the Lindley property for Ventura’s use of various utility lines. [Note: The Ventura utilities had already been installed, but it wasn’t until 1989 that an easement was actually conveyed.] Fast forward to 2014 when the Ventura property was being redeveloped, the Ventura owner discovered that there were Lindley utilities also within the easement and that they were preventing the Ventura property from installing a certain type of new drainage system.

Ventura argued that the easement language of “exclusive” served to exclude not only third parties, but use of the easement by the grantor (Lindley) as well. The trial court

disagreed and determined that the use of “exclusive” in this context did not mean to exclude the Grantor from also making use of the easement for utilities.

Court of Appeal

On appeal, there were two main issues – (1) what “exclusive” meant in this context and (2) whether Lindley’s use would unreasonably interfere with Ventura’s use of the easement.

First, the court reiterated that the general rule is that despite granting an easement, the owner of the servient tenement may make any use of the land that does not unreasonably interfere with the easement. Here, the evidence showed that Lindley had installed its utilities in 1988 (above the preexisting Ventura utilities), which was before the 1989 easement was actually granted. Thus, the court concluded it did not make sense for “exclusive” to prevent Lindley from using the easement for its own utilities when they had in fact been installed before Lindley granted Ventura the legal rights under the easement. Therefore, “exclusive” in this context only means the exclusion of third parties.

Second, the viability of Lindley’s use of the easement turns on whether or not such use unreasonably interferes with Ventura’s use. The facts showed that while the easement language defined the width of the easement as three feet, it did not define at what depth the Ventura utilities would be placed or the number of permissible utilities. The court found that Ventura was not entitled to disrupt Lindley’s permitted use of the easement after more than 20 years simply because Ventura wanted to change the nature of its drainage utilities. Further, there was still space in the easement

*Case RoW
continued on page 26*

Pure Oil Company Founded by Independent Producers in January 24, 1895

*By Mr. Bruce A. Wells, Executive Director
American Oil and Gas Historical Society
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To counter Standard Oil Company's market dominance, Pennsylvania oil producers, refiners, and pipeline operators organized what would become a major Chicago-based oil venture. Originally based in Pittsburgh, Pure Oil Company quickly grew into the second vertically integrated U.S. petroleum company after Standard Oil.

An Ohio firm adopted the old Pennsylvania name.

Beginning in early 1896, Pure Oil marketed its petroleum products by horse-drawn tank wagons in Philadelphia and New York — successfully competing with Standard Oil's monopoly. The Ohio Cities Gas Company of Columbus acquired Pure Oil and in 1920 adopted the former Pennsylvania company's name.

Pure Oil Company in 1926 moved into its new 40-story Chicago headquarters building at 35 East Wacker Drive.

With a new Chicago headquarters opened in 1926, Pure Oil began exploring offshore exploration technologies within a decade. The company developed early freestanding drilling platforms in the Gulf of Mexico.



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*Case RoW
continued from page 24*

for Ventura to install new drainage lines and that is all the easement granted.

Therefore, Lindley's concurrent use of the easement was permissible, and it did not unreasonably interfere with Ventura's rights to the easement.

Conclusion

This case serves as a reminder that the specific easement language matters when it comes to balancing the rights to use the easement between the Grantor and the Grantee. Grantors should be mindful that any use of the easement must confirm to the terms of the easement and not otherwise unreasonably interfere with the rights of the Grantee. Grantees should also be cognizant of potential future needs and the necessity of specific language when negotiating the terms of an easement.

Ms. Leivas can be reached at leivas@nossaman.com.

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CALIFORNIA “PAYING QUANTITIES” LAW AND CURRENT TRENDS AFFECTING IDLE OIL OR GAS WELLS

by Kevin L. Shaw and Tanner M. Sykes¹

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I. INTRODUCTION.

Wide price fluctuations in oil and gas wellhead prices have been seen for several decades and seem likely to continue. Periods with low prices create considerable uncertainty regarding maintenance of oil and gas leases beyond their primary terms. Lessees who have undertaken significant financial risks and made substantial investments to acquire, explore and develop leasehold properties are concerned about their resource base; on the other side, lessors and surface owners are concerned about idle and abandoned wells and facilities restricting their use of their lands and depressing market prices.

For some time now, the California Public Resources Code has given state officials the power to order idle wells abandoned and plugged if they determine the wells have no reasonable expectation of being reactivated.² Cities and counties also have standing to seek closure of idle wells under the Code.³

More recently, state policies have restricted or prohibited the development or redevelopment of oil and gas reserves, and several local jurisdictions are taking steps to severely restrict, or prohibit, production. Public policy may frustrate the intentions of lessor and lessee in the oil and gas lease relationship.

This article explores the nature of the oil and gas leasehold estate in the State of California and the current status of “paying quantities” law. Included in that discussion will be a detailed review of the factors used by the courts in deciding whether a well is producing sufficiently to extend its life beyond the primary term.

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² Cal. Pub. Res. Code §§ 3206, 3206.5 (West 2019).

³ Id.

II. NATURE OF OIL AND GAS LEASEHOLD ESTATE IN CALIFORNIA.

The oil and gas lease authorizes the lessee or his assignee to enter a property for the purpose of exploring for and developing the mineral resources on the premises. The customary oil and gas lease contains a “habendum clause,” which typically provides that the lease may be kept alive for a fixed period of time (the “primary term”) and “so long thereafter as oil or gas is produced” from the leased premises (“the secondary term”). In California, an oil and gas lease with a “so long thereafter” habendum clause creates a determinable fee interest in the nature of profit a prendre, an interest that terminates upon the happening of the specified event with no notice required.⁴ Thus, unlike non-compliance with certain other lease provisions, non-compliance with the conditions of a habendum clause results in automatic termination of the lessee’s interest.

Almost universally, the word “production” in the habendum clause has been interpreted by courts to mean “production in paying quantities,” regardless of whether the reference to “paying quantities” is expressed.⁵ Among the courts of the various states, there is a conflict over whether the word “production” means actual production or merely the completion of a well that is capable of such production. Courts in the majority of states, including California, have construed the leasehold estate to be a determinable fee; thus, actual production is required to maintain the leasehold.⁶ Courts in a minority of states, including Oklahoma, Montana, and Wyoming, have adopted a more liberal position that discovery of oil or gas in paying quantities is sufficient to satisfy the habendum clause and that the lessee has a reasonable time thereafter in which to market the oil or gas produced.⁷

⁴ Lough v. Coal Oil, Inc., 217 Cal. App. 3d 1518, 1526, 266 Cal. Rptr. 611, 615 (1990).

⁵ Id. at 1526, 266 Cal. Rptr. at 615.

⁶ Montana-Fresno Oil Co. v. Powell, 219 Cal. App. 2d 653, 659, 33 Cal. Rptr. 401, 404 (1963).

⁷ See Stewart v. Amerada Hess Corp., 604 P.2d 854, 858 (Okla. 1979); Fey v. A.A. Oil Corp., 129 Mont. 300, 319, 285 P.2d 578, 587 (1955); and Pryor Mountain Oil & Gas v. Cross, 31 Wyo. 9, 222 P. 570, 573 (1924). Federal leases also require the completion of a well capable of producing in paying quantities and actual production within a “reasonable time” thereafter. See 30 U.S.C. § 226(i) (2014).

Although beyond the scope of this Article, there are other ways a lessor might attempt to terminate the lease for failure to produce; in practice, a lessor would raise one or more of these claims along with a claim under the habendum clause. Among the claims a lessor may seek to raise is that the lessee is unreasonably using the surface of the leasehold. The lessee under an oil and gas lease generally has the implied right to use so much of the surface of the leased lands as is reasonably necessary. Wall v. Shell Oil, 209 Cal. App. 2d 504, 25 Cal. Rptr. 908 (1962). However, the lessee generally owes the duty to the owner of the surface not to injure negligently the estate. Courts will look closely at the facts of each case to determine whether the use has been reasonable. (For a further discussion, see Annot., 53 A.L.R. 3d 16, 121-144.) See also, Cal. Code Civ. Proc. § 772.010 et seq. (the surface owner, in certain limited circumstances, has the right to terminate or limit the oil & gas lessee’s right to occupy the surface and the first 500 feet below the surface).

Other issues that often arise in the context of oil and gas lease litigation include the policy against speculation, in which courts have taken the position that the lessee may not continue to keep a lease for its “speculative” value; and the implied duty of good faith and fair dealing, which requires the lessee to consider the interests of the lessor in making decisions concerning leased land.

Finally, there is the “prudent operator standard,” which has been adopted by California courts. See R.R. Bush Oil Co. v. Beverly-Lincoln Land Co., 69 Cal. App. 2d 246, 158 P.2d 754 (1945). Under this rule, the lessee’s duties under the lease are measured against what a “reasonably prudent operator” would do in the same or similar circumstances. In general, the lessee has an implied duty to conduct diligent and proper operations on the leased premises. In particular, the lessee has a duty to drill for and market the oil that could be produced from the lease.

III. THE LAW OF “PAYING QUANTITIES.”

As discussed above, a typical oil and gas lease is maintained into and throughout the secondary term if it continues to produce in “paying quantities.” Paying quantities has been defined as the existence of a well that pays a profit, however small, over operating expenses, even though it may never repay its costs and the enterprise as a whole may prove unprofitable.⁸ Courts use two approaches when evaluating whether an oil or gas lease is producing in paying quantities: an “objective approach” or a “subjective approach.”

Under the objective test, paying quantities is determined by a purely mathematical calculation. Under the subjective approach, the standard is whether a prudent lessee would continue to operate the lease for a profit and not for speculation. Most jurisdictions that have addressed the question, except Kansas,⁹ have now embraced the subjective approach. Even the courts that employ the subjective test, however, use a two-prong test to decide whether a well is producing in paying quantities: first, the objective test is used and, second, only if a profit is not found, is the subjective standard also applied.¹⁰

A. Objective Approach.

The objective approach to determining whether paying quantities are present asks whether the revenue from the sale of oil and gas sufficiently exceeds ongoing operating costs to produce a profit for the lessee. Excluded as elements of expenses to be subtracted from the value of production are costs such as the initial drilling and equipping costs.¹¹ These excluded costs are commonly referred to as “sunk costs.” Although this formula seems alluringly simple, the thousands of pages of case law on the subject attest to the difficulty courts have in establishing finite parameters for applying this approach. Differing results have been issued depending on many variables in calculation including what types of production expenses should be included in the calculation and what time frame should be considered in deciding whether a well is operating at a profit.

1. *Time Frame.*


In recognition of widely fluctuating commodity markets, there is no hard and fast rule for establishing a time period for determining whether a lease has been producing in paying quantities and courts have examined many different time periods. While the range of periods examined by the courts is wide, most take the position that profitability should be determined over a relatively

⁸ See Lough, 217 Cal. App. 3d at 1528, 266 Cal. Rptr. at 617; Louisiana is the only state that does not exactly define a well as “producing in paying quantities” if revenues from production exceed production costs. LA. REV. STAT. ANN. §§31:124, 125 (2008) (stating that the amount of royalties being paid may be considered in determining paying quantities only insofar as it may show the reasonableness of the lessee’s expectation in continuing production.).

⁹ See Reese Enterprises, Inc. v. Lawson, 220 Kan. 300, 313-14, 553 P.2d 885, 897 (1976) (holding that “the better approach is to follow the innumerable cases which apply an objective test, where the determination of “paying quantities” turns upon a mathematical computation”). See also Thomas P. Battle, Lease Maintenance in the Face of Curtailed/Depressed Markets, 32 Rocky Mt. Min. L. Inst. § 14.05 (1986) (hereinafter, “Battle”). Battle contains an excellent summary, some of which is outlined in this Article, of the factors used in the “objective” and “subjective” tests.

¹⁰ See, Battle, at § 14.05.

¹¹ Lough, 217 Cal. App. 3d at 1528, 266 Cal. Rptr. at 617.



long time span to account for temporary market fluctuations. In the California case of Lough v. Coal Oil, Inc.,¹² the Court of Appeal noted that the time span generally deemed acceptable by the courts ranges from six to twenty-five months. In examining a longer time period, the Kansas Supreme Court has found that the thirteen-year life of the lease was an unreasonable amount of time to use in the paying quantities analysis because it allowed the lessee to benefit from flush times, distorting the lease's present condition.¹³

2. *Revenue Included.*

The second element of the objective test - what revenue to use - is much more straightforward. The few cases addressing this question have consistently held that all production revenue and other income attributable to the working interest created by the original lease must be considered. All income attributable to any overriding royalty or other non-cost-bearing burdens that had been subsequently created out of the lessee's working interest will be included in determining income.¹⁴

3. *Expenses.*

The third element of the objective approach - expenses – is, not surprisingly, a heavily litigated area because a decision to allow a deduction for a particular expense can be determinative of whether a well is producing in paying quantities. The general rule is that to be included in the calculation, an expense must be traceable to the actual expense of production of the well. Accordingly, the following types of expenses have been approved by courts without controversy: salaries of pumpers and other persons operating equipment on the lease; costs for repairs of lifting and producing facilities; power and telephone expenses; taxes, including taxes on mining rights; and lessor's royalties.¹⁵

In the Lough case, the court concluded that operating expenses used in determining paying production also included “operations which merely serve to improve the productivity of a well and which do not involve new drilling or major equipment.” Included among those expenses were the costs of re-perforating and testing the well.¹⁶

¹² Id. In one case, one month was found to be too short a time period to accurately determine profitability, whereas a year was deemed enough time. Transport Oil Co. v. Exeter Oil Co., 84 Cal. App. 2d 616, 624, 191 P.2d 129, 134 (1948).

¹³ Texaco, Inc. v. Fox, 228 Kan. 589, 618 P.2d 844 (1980). For a collection of cases dealing with the selection of time periods, see Annot., 43 A.L.R.3d 8, 60-66; See also 3 Williams & Meyers, Oil and Gas Law, § 604.6(c) n. 1 (2021).

¹⁴ See Battle, at § 14.05[1]; Transport Oil Co., 84 Cal. App. 2d at 625, 191 P.2d at 133; see also Clifton v. Koontz, 160 Tex. 82, 325 S.W.2d 684 (1959). In many states, there has been litigation over whether royalties are due on proceeds from the “take-or-pay” provisions of some gas sales contracts. This issue seems unlikely to arise in most “paying quantities” lease termination claims because significant “take-or-pay” claims typically arise in circumstances where the wells are capable of producing substantial amounts of gas. The operation of such wells would usually be profitable.

¹⁵ Lough, 217 Cal. App. 3d at 1531, 266 Cal. Rptr. at 619.

¹⁶ Id. at 618-19.

Expenses generally not included in the calculation of paying quantities are exploration, drilling, and completion costs, because these costs are not incurred as a result of the lifting of oil from the ground. Only expenses incurred after the commencement of production are considered.¹⁷

In addition, courts have held that expenses incurred in “reworking” an oil well are capital expenses rather than operating expenses; and thus, should not be considered in determining whether production was in paying quantities.¹⁸ However, “reworking” costs may not always be excluded from the paying quantities calculation. For example, repetitive acidizing, sand bailing, or hot-oil treatments, which may be classified by the lessee as a “workover,” may actually be considered by the court as “ongoing expenses.”¹⁹ Another example of a cost that has been treated as capital rather than ongoing is the cost of converting a well to a saltwater disposal system.²⁰

Among the expenses not clearly on either list - deductible or nondeductible - are marketing expenses, depreciation, overhead, and transportation costs. Each of these has provoked differing views from courts across the nation as to whether such expenses should rightly be considered as ongoing operating costs. A further discussion of these issues follows.

a. Marketing Expenses

The issue of marketing expenses has not been settled as a cost of operation. The Interior Board of Land Appeals includes “rendering the oil or gas marketable” and “marketing the product” in the costs of day-to-day operations and includes the “cost of marketing the products” as a deductible cost for the purpose of determining production in paying quantities.²¹ On the state level, a Texas court has indicated that, in addition to labor and repair, marketing expenses attributed to the particular well are deductible.²² In contrast, the Oklahoma Supreme Court has determined that “capable of producing in paying quantities” does not include marketing the product, although the court did not address the question of whether marketing expenses would be included in the cost of operation.²³ In support of including marketing expenses as a cost of pro²⁴

¹⁷ See Koljack, Determination of Paying Quantities: An Accounting Perspective, 18 Tulsa L.J. 475, 480-81 (1983); Stewart, 604 P.2d at 857 (holding that the cost of drilling a production well is not an item to be considered in computing production costs).

¹⁸ See e.g., Pshigoda v. Texaco, Inc., 703 S.W.2d 416 (Tex. App., Amarillo, 1986) (holding that jury instruction that reworking expenses should be excluded from the jury’s determination of whether well was profitable and producing “paying quantities” was proper); See also O’Neal v. JLH Enters., 862 So. 2d 1021, 1027 (La. Ct. App. 2003) (“Workover expenses, considered to be extraordinary expenses, are generally distinguished from operating expenses and should not be included as an operating expense when determining if there was production in paying quantities.”).

¹⁹ Battle, at § 14-19.


²⁰ Lege v. Lea Exploration Co., Inc., 631 So. 2d 716 (La. App. Ct. 1994).

²¹ See International Metals & Petroleum Corp., 158 IBLA 15 (2003); See also Rio de Viento, Inc., 153 IBLA 32, 41-42 (2000) (costs of marketing the product included as cost of production, but costs for the construction of a lengthy pipelines and sulfur dioxide processing plant were not included in determining if a well was producing in paying quantities).

²² Hutchison v. Tex-Lee Drilling & Dev. Co., 1997 Tex. App. LEXIS 5877, *9 (Tex. Ct. App. Nov. 13, 1997) (not designated for publication) (the court identified “the landowner’s share of royalty; labor, marketing, and repair costs; depreciation on salvable equipment; overhead expenses attributable to the well; and taxes on the operator’s interest” as expenses that are used in calculating production in paying quantities.).

²³ Pack v. Santa Fe Minerals, 869 P.2d 323 (Okla. 1994).

²⁴ Williams & Meyers, Oil and Gas Law, § 604.6(b) (2021).



duction Williams & Meyers suggests that the product requires marketing in order for there to be any paying production in the first place.

b. Depreciation.

The issue of whether depreciation should be included as an operating expense in the paying quantities analysis has been dealt with by only a few courts, with varying results.

In an early case dealing with the issue of paying quantities in regard to the construction of a contract of assignment and not a habendum or development clause, the court clearly and strongly indicated that depreciation “on the well and equipment” should have been considered as part of the expense of operating the well in computing paying quantities.²⁵

In Texas and Oklahoma, however, courts have been consistent in holding that some form of depreciation must be accounted for in determining whether the well is producing paying quantities. The Texas Supreme Court has held that depreciation on equipment used in producing or marketing oil or gas should be included as an operating cost but that depreciation of the original drilling and completion investment cost should not be included as an operating expense.²⁶

The Oklahoma Supreme Court has also concluded that actual depreciation on producing equipment must be included as an expense.²⁷ The rationale for the rule, the court said, is that while depreciation of the original investment in the drilling of a well may not be a direct lifting expense, production-related equipment does have value that is being reduced through its continued operation. However, the court has narrowly interpreted the term production equipment, disallowing depreciation on items such as the casing, tubing, and Christmas tree, as well as the line heater or low-pressure separator, finding no evidence such items were used in lifting operations.²⁸

The Kansas courts, on the other hand, have firmly rejected the Texas and Oklahoma approach, refusing to include depreciation on equipment as an expense in determining the profitability of an oil or gas well on the grounds that depreciation is not a direct operating cost.²⁹

²⁵ See Transport Oil Co. v Exeter Oil Co. (1948) 84 Cal App 2d 616, 191 P.2d 129; West v Russell (1970) 12 Cal App 3d 638, 90 Cal Rptr 772, 43 ALR3d 1.

²⁶ See Skelly Oil Company v. Archer, 163 Tex. 336, 356 S.W.2d 774, 781 (Tex. 1962), on rel'g, 5 Tex. Sup. Ct. J. 275 (Tex. 1962) (holding that “actual” or “physical” depreciation of salvable equipment being used to produce gas from a well should be included as an operating expense); Clifton, 160 Tex. at 82, 325 S.W.2d at 684 (holding that depreciation of equipment used exclusively for the drilling and completion of the well was not includible as an expense); A depreciation charge will be a proper expense, however, insofar as it relates to production equipment. Evans v. Gulf Oil Corp. emphasized the language in Skelly Oil Co. v. Archer, noting that “actual depreciation,” as opposed to a book-keeping entry, should be used when determining whether production was in paying quantities. 840 S.W.2d 500 (Tex. Ct. App. 1992).

²⁷ Stewart, 604 P.2d at 857.

²⁸ Mason v. Ladd, 630 P.2d 1283, 1285 (Okla. 1981).

²⁹ See Texaco, Inc., 228 Kan. at 589, 618 P.2d at 848 (expressly rejecting the rationale of Stewart and holding that depreciation on equipment should not be taken into account in determining whether a lease is producing paying quantities).

In California, the issue of whether to include depreciation as a deductible expense has not been definitively decided. In Transport Oil Co. v. Exeter Oil Co.,³⁰ the issue was raised but left unanswered. The California Court of Appeal did say in dicta, however, that there “is room for argument . . . that depreciation might reasonably be treated as an operating cost,” but that issue need not be decided in that case. In West v. Russell, the California Court of Appeal was only slightly more definite, saying that depreciation costs on operating facilities “possibly could properly be charged” as overhead expenses to determine net profit, but the lessor had failed to establish such costs.³¹

c. Overhead.

Administrative overhead often becomes a problem in the paying quantities analysis because of the dilemma of determining when, and if, administrative overhead relates to the direct operation of the well. While it is clear that direct pumping and maintenance labor and direct field supervision are deductible expenses, the uncertainty arises when looking at district or headquarters supervision and support staff costs. Because the issue of overhead has not clearly been decided in California, a review of decisions on point in other states is fruitful.

On one side, the Texas Supreme Court has held that overhead charges which could be traced to the actual expense of production of the well’s product for marketing should be considered in determining whether the well was producing in paying quantities.³² In addition, Louisiana courts have indicated that at least certain reoccurring accounting fees can be included as costs of production.³³ The Oklahoma Supreme Court has conversely held that administrative overhead expenses should not be a factor in the determination of paying quantities. In Mason v. Ladd Petroleum Corp.,³⁴ the Oklahoma Supreme Court held that the expense of a district office of a large independent oil company was “too indirectly and remotely related” to the lifting or producing operations to be included in the paying quantities analysis. The court reasoned that if administrative overhead costs are included in computing net revenue, a well might be profitable when operated by a single operator, but nonprofitable in the hands of a large corporation.³⁵

Some commentators, however, have argued that certain overhead expenses incurred due to operations of a particular lease should be a factor in calculating profitability.³⁶ For example, if a small office is maintained specifically to oversee production of a particular lease, the expense of maintaining that office should be charged to that lease. Other examples of expenses that should be considered include costs of accounting, legal and other professional services, and administrative services that can be traced directly to the operation of a particular lease.³⁷

³⁰ 84 Cal. App. 2d at 623, 191 P.2d at 134.

³¹ 12 Cal. App. 3d 638, 644, 90 Cal. Rptr. 772, 775 (1970).

³² See Skelly, 163 Tex. at 345, 356 S.W.2d at 781.


³³ See Wood v. Axis Energy Corp., 899 So. 2d 138 (La. Ct. App. 2005) (The court included “resource alternatives,” which are certain reoccurring accounting fees, as costs).

³⁴ 630 P.2d at 1285.

³⁵ Id.

³⁶ 2 Eugene Kuntz, A Treatise on the Law of Oil and Gas § 26.7(m) (2009).

³⁷ Id.



Once again, the issue has not clearly been decided in California. In West v. Russell,³⁸ the court, in computing the average net profit from the leasehold in question, disregarded items of overhead other than taxes and license fees, as, for example, management expenses and depreciation. The court conceded that possibly depreciation and other items of cost incident to the owned rig (used in “pulling the well”) could properly be charged as overhead expenses in determining net profit from the well if those costs were established by the evidence. However, the plaintiff lessors introduced no evidence bearing on the amount of these or any other items of overhead, and they thus failed in their burden of proof and their contention had to be rejected.³⁹

d. Transportation.

There is little case law on the question of whether transportation costs should be deducted in determining profitability under the objective standard of paying quantities. In one case, Skelly v. Archer,⁴⁰ the Texas Supreme Court refused⁴⁰ to approve or disapprove a lower court’s holding that the costs of construction of a pipeline, like the casing and tubing in the well itself, represented a capital expenditure, and no part of the capital expenditure should be included in determining paying quantities. Some commentators have argued that the costs of getting the lease products to the marketplace should be deducted from the price received from such products at the outlet. Such a position is analogous to the position normally taken by the lessee in “cost-netting” such expenses to reach a “wellhead value” for royalty valuation purposes.⁴¹

The use of “netback” methodology to deduct transportation costs has been addressed by a few courts. The netback method identifies all relevant costs incurred in the downstream operation and then subtracts those costs from the total revenues realized from selling the product. In Oklahoma, in order to use a netback methodology, a lessee has to expressly spell out, beyond the use of the term “net proceeds at the well” or “market value at the well,” the deduction of post-pipeline transportation fees that occur on the leasehold.⁴² On the other hand, Colorado does not require any specific language relating to deductions. Instead, the Colorado Supreme Court decided that the use of the term “net proceeds at the well” might be sufficient to allow the use of the netback methodology, depending on the case.⁴³ Kansas requires gas to be marketable at the well in order for reasonable transportation costs to be deductible through the use of the netback methodology.⁴⁴

B. Subjective Approach.

In recognition of the lessee’s substantial investment in the drilling operation, many states, including Texas, Oklahoma, and Louisiana, have adopted a subjective test in deciding whether a well is producing in paying quantities. Under the test, the court looks at whether or not a reasonably prudent operator would continue to operate a well in the manner in which it was being operated for purpose of making a profit - and not merely for speculation.

³⁸ 12 Cal. App. 3d at 638, 90 Cal. Rptr. at 772.

³⁹ Id. at 644, 90 Cal. Rptr. at 775.


⁴⁰ 317 S.W.2d at 47.

⁴¹ Battle, at 14:05[2].

⁴² Wood v. TXO Production Co., 854 P.2d 880, 882-883 (Okla. 1992).

⁴³ Garman v., Conoco, Inc., 886 P.2d 652 (Colo. 1994).

⁴⁴ Sternberger v. Marathon Oil Co., 894 P.2d 788 (Kan. 1995).



In determining paying quantities under the subjective test, the court must take into consideration all matters that would influence a reasonable and prudent operator. Some of the factors considered, as outlined by the Texas Supreme Court in Clifton v. Koontz,⁴⁵ are: the depletion of the reservoir, the price for which the lessee is able to sell his product, the relative profitability of other wells in the area, the operating and marketing costs of the lease, the lessee's net profit, each of the foregoing calculated over a reasonable period of time, and whether or not the lessee is holding the lease merely for speculative purposes.

In the subsequent case of Skelly v. Archer, the Texas Supreme Court clarified that the subjective test did not replace the objective approach, but it was simply to be used as the second prong of the analysis when the lessee fails to establish "paying quantities" under the objective test.⁴⁶ Since the Skelly decision, there has been little litigation involving the subjective standard in any state.⁴⁷ However, the subjective approach has been endorsed by several commentators, including Williams & Meyers, who conclude that the lessee has a strong argument for holding the lease during a period when temporary depression prevents paying production.⁴⁸

The State of Louisiana Mineral Code follows Clifton v. Koontz, and defines production in paying quantities as follows: "When a mineral lease is being maintained by production of oil or gas, the production must be in paying quantities. It is considered to be in paying quantities when production allocable to the total original right of the lessee to share in production under the lease is sufficient to induce a reasonably prudent operator to continue production in an effort to secure a return on his investment or to minimize any loss."⁴⁹


⁴⁵ 160 Tex. at 82, 325 S.W.2d at 684.

⁴⁶ 163 Tex. at 336, 356 S.W.2d at 774.

⁴⁷ Williams & Meyers note that although Texas applies a two prong objective and subjective test a number of Texas Courts of Appeal cases in dicta have abandoned the subjective test where there is a "total cessation of production," i.e., when a well that has been producing gas ceases to produce any quantity of gas. See Brown v. Reeter, 170 S.W.3d 151, 155 (Tex. Ct. App. 2005); Cannon v. Sun-Key Oil Co., 117 S.W.3d 416, 422 (Tex. Ct. App. 2003); Anadarko Petroleum Corp. v. Thompson, 60 S.W.3d 134 (Tex. Ct. App. 2000) *rev'd on other grounds* 94 S.W.3d 550 (Tex. 2002). Williams and Meyers comment, however, that the reasonable and prudent operator test should be applied regardless of the nature of the cessation of production to determine if the habendum clause requirement of production in paying quantities has been met. 3 Williams & Meyers, Oil and Gas Law, § 604.5 (2008). A couple of recent Texas decisions have reinforced the use of the two prong test following Clifton v. Koontz and Skelly v. Archer. See, e.g., Dreher v. Cassidy Ltd. P'ship, 99 S.W.3d 267 (Tex. Ct. App. 2003) (In order to prevail on a summary judgment motion, a lessor must present evidence on both prongs of the test, otherwise a triable issue of fact exists); See also Grinnell v. Munson, 137 S.W.3d 706, 715 (Tex. Ct. App. 2004) (applying two-pronged Garcia/Clifton test). Additionally, the court in Cannon v. Sun-Key Oil Co. relied on the factors listed in the Clifton v. Koontz case and ruled against the lessor on the question of whether there was sufficient evidence that a reasonable and prudent operator would not have continued to maintain a lease where there was only marginal production. 117 S.W.3d at 422.

⁴⁸ Williams & Meyers make the following argument in support of their position: Clearly the lessee is not holding the land merely for speculative purposes, since under normal conditions the lease is presently producing in paying quantities. If the lessor is receiving a financial benefit from production, and if present production under normal conditions would be in paying quantities, and if the lessee in good faith decides that he can better himself financially in the long run from production at the present rate, the better rule would seem to be to allow the lessee to continue to hold the lease, despite a current loss due to depressed market conditions. Such a rule would not only avoid conflict with the policy against holding leases for purely speculative purposes, but in periods of sharp depression in the oil and gas industry, it would provide essential relief to all operators. Williams & Meyers, Oil and Gas Law, § 604.6(c) (2008).

⁴⁹ LA Rev Stat § 31:124 (2021)



Commentary following Article 124 of the Louisiana Mineral Code states that “the test set forth in the Koontz decision is essentially a statement of the manner in which the combined test set out in the Louisiana jurisprudence has functioned and appears preferable to any mechanical test of requiring that as to the working interest there must be only meeting of current operating costs with a “small” but undefined profit left over...”

Article 125 of the State of Louisiana Mineral Code states: “In applying Article 124, the amount of the royalties being paid may be considered only insofar as it may show the reasonableness of the lessee’s expectation in continuing production. The amount need not be a serious or adequate equivalent for continuance of the lease as compared with the amount of the bonus, rentals, or other sums paid to the lessor.”⁵⁰

IV. CERTAIN OBSERVATIONS ABOUT IDLE WELLS AND REDEVELOPMENT.

A. Lessor-Lessee Communications Generally.

Irrespective of whether a lease is producing in “paying quantities,” landowners are interested in the development of their property and the revenues that they derive or expect to derive from production. Obviously, wells that are idle or are producing marginal or nominal amounts do not generate significant revenues for the landowner. In such case, the landowner is naturally less tolerant of the lessee’s disruptive use of the surface. If and when wells are idle for a significant period of time, an active landowner may inquire of the lessee as to the status of the wells and the lessee’s intentions for the future of the wells and the lease generally. In most cases, lessors and lessees would benefit from better communications with each other about their respective plans for the property. If the lessee is dealing with the landowner in good faith and is attempting to be responsive to reasonable inquiries from the landowner, the landowner is more likely to be understanding of the particular circumstances that cause a well to be temporarily shut in.


B. Development Plans/Possibilities.

Where the lessee has plans for remedial work on the existing wells, further development, re-development and/or exploration of the lease, or the evaluation of the lease or field for secondary or tertiary recovery projects, etc., then a very general description of those plans could be useful in persuading the landowner that he should continue to tolerate idle wells on the lease. If, on the other hand, the lessee is simply postponing the inevitable expense of plugging and abandoning idle wells and restoring the leased premises or is holding the lease purely for speculative purposes, then the landowner may be justified in taking the position that the lease has terminated for failure to produce in paying quantities and demanding that the wells be plugged and abandoned.

C. Regulatory Restrictions.

Various formal and informal policy initiatives at the state and local level in California are limiting the ability of lessees to drill new wells and to recomplete or rework existing wells. Some oil and gas leases have express provisions dealing with the effect of delay in obtaining necessary governmental permits for operations on the lease. Those provisions may become relevant in a paying quantities scenario if there are substantial delays in obtaining the right to engage in those

⁵⁰ LA Rev Stat § 31:125 (2021)



operations. Conversely, if the lease is silent on the question of delays or prohibitions caused by government action or inaction, then the lessee might reasonably argue that this factor allows the lessee a greater period of time to restore production at appropriate levels.

D. Points to Consider when Negotiating Surface Use Issues.

A landowner who wants to terminate the oil and gas lease burdening his lands or at least eliminate the present surface use of the oil and gas lessee would consider the regulatory provisions of any state regulatory agency to be another tool to compel the lessee to plug and abandon idle wells and perhaps leave the premises. There are probably very few cases where a landowner would be able to succeed by pursuing regulatory remedies, but be unable to prevail in court in a claim that the lease has terminated under the habendum clause. Nevertheless, some additional pressure may be brought to bear on the lessee by having the supervisor examine more closely the operations on that lease. And recent actions by state and local agencies to limit or prohibit development operations may stand in the way of activities that both lessor and lessee favor. In any event, before the relationship degenerates into adversary proceedings in either an administrative or judicial setting, both landowner and lessee should consider the following:

--Does the lessee really have plans to reactivate these wells, or have they simply been shut-in and forgotten about?

--What other plans does the lessee have for the lease? If the producing formations were long-ago fully developed and there is no reasonable prospect for further exploration, development, enhanced recovery, etc., then the operator should consider whether production from the lease has declined sufficiently such that, although the lease is technically producing in paying quantities, the administrative overhead involved in dealing with the landowner and California's regulatory agency, CalGEM, make continued retention of the lease uneconomic in the broadest sense. Perhaps a partial release of the lease would suit the needs of both lessor and lessee, freeing up certain surface acreage needed by the lessor while allowing the lessee to reserve adequate access rights for any future operations contemplated. Those portions of a lease that have idle wells eligible for plugging and abandonment under regulatory authority may not be necessary for the lessee's future operations elsewhere.

--Costs for compliance with environmental and other regulations and the costs of plugging, abandoning, and site remediation will almost certainly be greater in the future. In some cases, the amount of that increase may exceed the time value of the money the lessee saves by postponing the inevitable.

--During periods of low wellhead prices for oil or gas, it is usually not possible to forecast accurately when prices will rise; currently uneconomic idle wells may never become economic. Even during periods with high prices, not every idle well can be profitably restored to production. Price forecasting is a difficult issue, but the experience of the last decade suggests that the parties should not plan on sustained higher prices over the long term.

--Does the landowner have current development plans or is there only a general desire to develop the surface? Given the long lead times to obtain the governmental approvals necessary for development or re-development, perhaps there is no immediate need for the lessee to wind-up

its operations. Rather, a fixed or floating schedule for dealing with idle wells and marginal operating wells may be satisfactory for both parties. A landowner who has other plans for the surface should consider contributing something toward plugging and abandonment costs in order to accelerate the process.

Many of the foregoing considerations are not affected significantly by state regulations, but, in some instances, pressure from regulatory authorities and general policies limiting oil and gas operations could alter the bargaining positions of the parties.

V. CONCLUSION.

One of the most significant changes made by California and other regulatory authorities in oil and gas producing states is the level of attention being paid towards mounting plugging and abandonment liabilities. Authorities are actively requiring that operators justify the wells' continued existence if called upon to do so. Additionally, private landowners are given a more active role to play under the laws and are pressuring legislators and regulators to address these liabilities.

Furthermore, failure to file the required fees or bonds and to submit the prescribed statement regarding reactivation plans can lead to the state determining that the well has been deserted, enabling the state to order the wells plugged and abandoned. The effect of these provisions appears to place the burden of proving the continued viability of the well on the lessee, which constitutes a significant shift from the prior situation where lessees could allow wells to sit idle indefinitely so long as no hazardous situation existed, the lessor did not take legal action or the secondary term under the habendum clause had not yet come into play.

However, even a lessee with reasonable and practical redevelopment plans may find that those plans may not be feasible in an increasingly hostile regulatory environment. California law historically expressed a traditional public policy in favor of the efficient development of its resources; modern trends are less supportive.

Paying quantities analysis will continue to determine the status of oil and gas leases, although changing public policy affecting operations may play an increasingly important factor in that analysis.



AUSTRALIA BACKS ITS RARE EARTHS INDUSTRY TO COUNTER CHINESE DOMINANCE

By Tsvetana Paraskova of oilprice.com

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Australia unveiled on Wednesday a new support scheme for its domestic rare earth mining and supply chain industry as the U.S. ally looks to reduce global dependence on China for the minerals critical to technology manufacturing and the

energy transition.

Australia's government [said](#) it would allocate US\$180 million (AUS\$250 million) in the 2022-2023 budget to support the growth of Australia's critical minerals sector and create a domestic supply chain of secure and stable rare earth metals supply. The federal government also [announced](#) over US\$175 million (AUS\$243 million) in support for four projects—an integrated nickel manganese cobalt battery material refinery hub, a project to process high-grade vanadium, a first of its kind rare earth separation plant in Australia, and a high purity alumina production facility.

According to [Roskill](#), a Wood Mackenzie commodity research business, China accounted for 54 percent of global rare earth elements (“REE”) mining in 2021 and for a massive 85 percent of refined REE supply in the world.

“The geographic concentration of rare earth mining and refined production has long raised concerns over the potential for supply disruption and the wide-ranging end-use markets they serve,” Wood Mac’s analyst Ross Embleton and David Merriman, Manager, Battery & Electric Vehicle Materials, said in October 2021.

Commenting on the new Australian initiative, Minister for Industry, Energy, and Emissions Reduction Angus Taylor said: “Australia is lucky to have some of the largest reserves of the critical minerals and metals which drive the modern global economy. But China currently dominates around 70 to 80 percent of global critical minerals production and continues to consolidate its hold over these supply chains. This initiative is designed to address that dominance.”

“These investments align with the government’s commitment to securing our sovereign manufacturing capability, unlocking a new generation of high wage, high skill, high tech jobs by expanding into downstream processing, and will embed Australia in global supply chains for technology ranging from mobile phones to fighter jets,” Keith Pitt, Minister for Resources and Water, [said](#) in Australia’s 2022 Critical Minerals Strategy.

Australia’s goal is to become a critical minerals powerhouse by 2030, under its strategy, thanks to its high geological potential for a range of minerals, including critical minerals like cobalt, lithium, and rare earth elements.



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Bibikos' At the Well

Bibikos' At the Well Weekly Round-up

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

Interesting

- **Mariner East.** Energy Transfer reported that Mariner East is **done**.
- **Federal Court Enjoins Biden's Use of Social Cost of Carbon Metric in Environmental Review.** A Louisiana federal court issued a preliminary injunction **preventing** federal agencies from using the **social cost of carbon metric** after concluding that the metric's application increases regulatory costs. *Louisiana v. Biden*, --- F. Supp. 3d ---, No. 2:21-CV-01074, 2022 WL 438313 (W.D. La. Feb. 11, 2022).
- **Mountain Valley Pipeline.** The MVP in-service date keeps getting pushed back due to **steep costs**. NextEra Energy disclosed in a filing that it was **re-evaluating** its Mountain Valley Pipeline investment and had taken an **\$800 million impairment in the first quarter of 2022**. In the wake of the war, Senator Joe Manchin, Chairman of the Senate Energy Committee, called on the Biden administration **to use** the Defense Production Act if necessary to rush completion of the stalled Mountain Valley Pipeline to help **Europe replace Russian natural gas supplies**.
- **Dakota Access.** The United States Supreme Court **declined** to review the D.C. Circuit's invalidation of a key permit for the Dakota Access pipeline.
- **D.C. Circ. Says FERC Failed to Consider GHG Emissions for Pipeline Project in Massachusetts.** The D.C. Circuit held that FERC's environmental assessment for a pipeline project in Massachusetts **failed** to account for reasonably foreseeable **indirect effects** of GHG emissions attributable to burning the gas carried in the pipeline. *Food & Water Watch v. FERC*, --- F.4th ----, No. 20-1132, 2022 WL 727037 (D.C. Cir. Mar. 11, 2022).
- **Eleventh Circuit Holds that Enjoying Nature Gives Environmentalist Standing to Sue.** The Eleventh Circuit held that an environmentalist who regularly visits an area of wetlands to recreate and enjoy their natural beauty **has standing to complain about** the filling of a wetland with outside materials because it has diminished her aesthetic interest in that wetland, reasoning that these allegations suffice to establish an injury in fact for purposes of Article III standing. *Glynn Env't Coal., Inc. v. Sea Island Acquisition, LLC*, --- F.4th ----, No. 21-10676, 2022 WL 620284 (11th Cir. Mar. 3, 2022).

Headlines & Holdings – Appalachia

- **Commonwealth Court Denies ERA Challenge to Zoning Ordinance Amendment.** Pennsylvania's Commonwealth Court denied a challenge to a local zoning ordinance authorizing oil and gas development, rejecting claims that the ordinance violated the Environmental Rights Amendment and stating that **"there is nothing inherently illegal about unconventional oil and gas drilling**, and this Court has rejected any presumption that the activity will have an adverse effect on the environment or the population or that it is incompatible with residential zoning districts." *Murrysville Watch Comm. v. Municipality of Murrysville Zoning Hearing Bd.*, --- A.3d ----, No. 579 C.D. 2020, 2022 WL 200112 (Pa. Cmwlth. Jan. 24, 2022).
- **Ohio Supremes Address Life Estates and Oil and Gas Interests.** The Ohio Supreme Court held that a **provision in a deed** stating that grantors **"except and reserve one half of the royalty of the oil and gas under**



the above-described real estate” did not reserve only a life estate in that interest, holding instead that reservations were limited to lifetimes of reserving parties and later extinguished by Ohio Marketable Title Act. *Peppertree Farms, L.L.C. v. Thonen*, --- N.E.3d ----, No. 2020-0812, 2022-Ohio-395, 2022 WL 481532 (Ohio Feb. 15, 2022).

- **Ohio Supreme Court Addresses Mineral Deed Restrictions.** The Supreme Court of Ohio held that a county community development corporation **violated restrictions** on the transfer of property in a deed when it **leased and transferred subsurface mineral rights**. *Siltstone Res., L.L.C. v. Ohio Pub. Works Comm'n*, --- N.E.3d ----, No. 2020-0031, 2022-Ohio-483, 2022 WL 533499 (Ohio Feb. 23, 2022).
- **PA Superior Court Says Dispute Over Oil and Gas Delay Rentals, Bonus Belongs in Arbitration.** The Superior Court of Pennsylvania held that parties to various lease agreements had a valid agreement **to arbitrate causes of action for breach of contract** arising from a failure to pay “delay rental” payments and “additional bonus money/rent,” negligent misrepresentation of the continuing existence of a valid lease agreement, and fraudulent misrepresentation of the continuing existence of a valid lease agreement. *Monongahela Valley Country Club v. EQT*, --- A.3d ----, No. 421 WDA 2021, 2022 WL 575978 (Pa. Super. Feb. 25, 2022).
- **Fourth Circuit Green-lights Mineral Estate Trespass Case Despite Settlement.** The Fourth Circuit **declined to enjoin** litigation alleging that EQT **trespassed** into a mineral estate despite a final judgment in a class action settlement. *Kay Co., LLC v. Equitable Prod. Co.*, --- F.4th ----, No. 21-1614, 2022 WL 599320 (4th Cir. Mar. 1, 2022).
- **Commonwealth Court Denies PA Game Commission’s Bid for Oil and Gas Rights.** In a dispute over title to oil and gas **between a private party and the Pennsylvania Game Commission**, the Commonwealth Court held that the private party’s predecessor in title did not transfer ownership of coal, minerals, natural gas, and oil to the Commonwealth in a **1920 deed** and, consequently, that the **private party is now the current owner** of those natural resources. *Pa. Game Comm’n v. Int’l Dev. Corp. & Atl. Hydrocarbon (Bd. of Prop.)*, --- A.3d ----, No. 497 C.D. 2021, 2022 WL 628284 (Pa. Cmwlth. Mar. 4, 2022).
- **Ohio Federal Court Denies Lease-Busting Bid, Defines “Operations” to Include Back-Office Prep Towards Drilling.** In a **lease-expiration case** regarding commencement of operations, a federal court in Ohio held that the terms and phrases “operations” and “preliminary or preparatory work necessary for drilling” and “conducting internal technical analysis” as used in an oil and gas lease included back-office, technical, or administrative functions that took place in preparation for drilling a well on a unit which included the leased premises, **reasoning that physical activity need not take place on a lease or unit to qualify as “operations”** in order to prevent a lease from expiring. *ScenicView Estates LLC v. Eclipse Resources I, LP*, --- F. Supp. 3d ----, No. 2019-039, 2022 WL 715751 (S.D. Ohio March 10, 2022).

Headlines & Holdings - Beyond Appalachia

- **Fifth Circuit Holds that Oil and Gas Contractor’s Indemnity Obligation Capped at Min. Required by Policy.** The Fifth Circuit held that a **contractor owed no more indemnity to a gas company** beyond the contractor’s minimum required by the parties’ MSA even though the contractor obtained more coverage than the minimum amount, reasoning that the minimum required by the policy was “for the benefit of the other party as indemnitee” under the Tex. Oilfield Anti-Indemnity Act and that the contractor’s insurance policy contained a proviso limiting indemnity coverage. *Cimarex Energy Co. v. CP Well Testing, L.L.C.*, --- F. 4th ----, No. 20-50892, 2022 WL 457447 (5th Cir. Feb. 15, 2022).
- **Arkansas Appellate Court Untangles Mineral Interest Dispute.** In a case involving a **dispute over the percentage ownership in minerals interests**, a court of appeals in Arkansas interpreted the phrase “less and except one-half of all oil, gas and other minerals in, on and under the land under examination previously conveyed” as resulting in a 75/25 split based on prior conveyances rather than a 50/50 calculation urged by the plaintiff. *Phifer v. Ouellette*, --- S.W.3d ----, No. CV-20-733, 2022 WL 469241 (Ark. Ct. App. 2022).

- **Texas Appellate Court Says No Lien on Oil and Gas Leaseholders to Pay for Unpaid Bills.** In a **dispute over payments to contractors**, a court of appeals in Texas held that the state's mineral lien statute only permits a mineral lien to attach to the extent that the mineral lease holder has not paid its contractor, but here the contractor was paid in full under its contract and the statutory lien on the oil and gas leaseholder was therefore unavailable. *Pearl Resources Operating Co., LLC v. Transcon Capital*, --- S.W.3d ----, No. 08-19-00288-CV, 2022 WL 484546 (Tex. App. Feb. 17, 2022).



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The Supply Shortage That Could Derail The Electric Car Boom

By Josh Owens of oilprice.com

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An already voracious commodity supercycle is now witnessing even greater momentum amid fears of major supply-chain disruption and fallout from Russia's war on Ukraine that has sent markets into a tailspin.

Supply shortages of key battery materials from lithium and cobalt to nickel and graphite were looming large over the EV industry since the second half of last year. Now, those fears have been compounded.

With EV sales expected to double this year, auto giants are desperate to avoid battery supply chain disruptions and soaring costs of raw materials.

And the supply chain for all of these battery materials are now a matter of national interest for the United States government. The Biden Administration has been very clear about their desire and push towards a more robust US based EV supply chain.

While the bulk of the media attention has been on lithium, an even bigger shortage could threaten another key battery material: graphite.

Speaking to S&P Global Platts, Tirupati CEO Shishir Poddar said that by 2030, graphite demand is expected to be triple our global production capability. Poddar notes that we'll need up to 4 to 5 million tons more per year of graphite.

That puts the onus—and what could be a major opportunity—on graphite miners. Compounding that is the fact that once the graphite is out of the ground, is when the specialized skill and value addition comes into play. Battery grade graphite anode material is complicated to process, especially at scale, with significant barriers to entry.

This may provide a major opportunity for one of the world's top graphite processing companies, Graphex Group Ltd (OTC:GRFXY)

Not only does Graphex have operations in North America, but it also has processing facilities up and running in Asia producing this key battery material for almost 10 years right next to one of the world's largest graphite mines.

That could make it a critical bridge between the necessary current scale of Asian graphite and the United States, and more importantly ... a key potential step in reducing North America's battery material dependence by localizing the final processing for the growing EV battery manufacturers building factories in the US.

Now, Graphex is gearing up to list on the New York Stock Exchange (NYSE), making the opportunity even more exciting to us.

The \$50-Billion Graphite Opportunity

The global graphite market is projected to be worth \$50 billion by the end of this decade.

Why?

It's simple: Graphite makes up between 20%-30% of the material of every EV or energy storage battery, serving as the negative end, or the "anode", without which there is no lithium-ion battery at all.

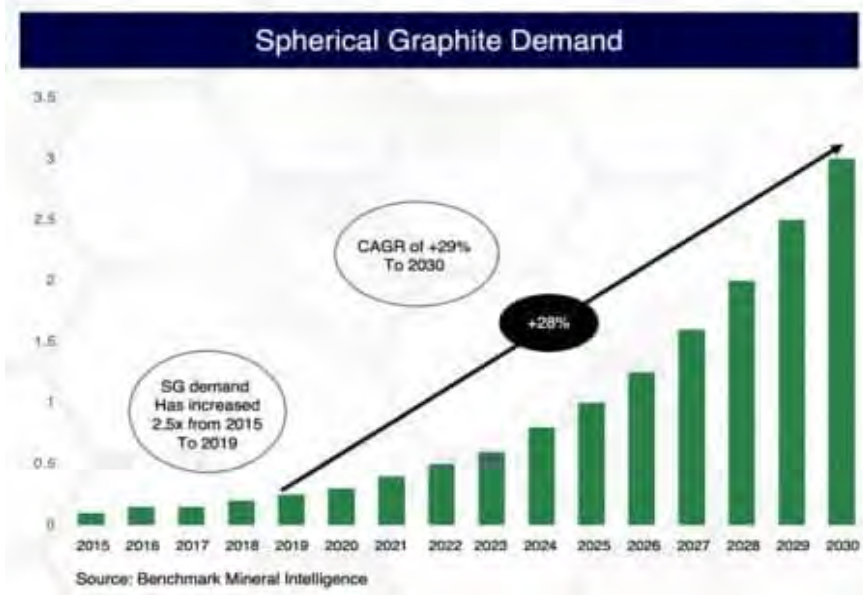
With global EV sales expected to double this year alone in an electric vehicle market that is already worth \$3-trillion. With battery giga factories being built up at a pace never seen before in any industry. And with just a U.S. energy storage market expected to grow to \$426 billion over the next decade.

The graphite and local processed graphite shortage may not just be imminent, it's upon us.

Demand

Demand is already soaring, But it is about to skyrocket. In the United States, approximately 13 new battery gigafactories are said to be in the works, which may be causing panic along the battery material supply chain.

Worldwide, these factories are quickly dotting the landscape adding desperation to manufacturers who are scrambling for materials offtake deals.



Graphite

100% of Current Global Processed

Graphite Comes from Asia and 70% of Mined Graphite Comes from China: Graphex Has a Solution.



The United States hasn't produced any graphite in decades. That leaves China, the only country that has any notable graphite processing facilities. In fact, most of the graphite we use originates in China and near 100% of the processed graphite comes from China.

Some 70% of all graphite utilized for the EV and Energy Storage industry comes from China, and Graphex Group Ltd (OTC:GRFX) via their wholly owned subsidiaries is reported to be one of the Top 5 producers in China of spherical graphite production and one of the top producers in the world.

Graphex has been operating in the graphite processing business in China since 2013. Its processing facilities in China's Heilongjiang Province are right next to one of the largest flake graphite source in the world.

China

But now, it has an answer to North America's dependence problem: Graphex says it's gearing up to build a bridge for this graphite that leads back home.

This isn't a brand new junior miner with a lot left to prove to investors.

Graphex already has long-term contracts with state owned mines and offtake agreements with major manufacturers along the battery and EV supply chain.

Now, with Graphex already expecting double-digit growth, it's not only working on a major expansion of production. It's working to bring its processing technology to North America, too.

According to Graphex executives, the company is producing 10,000 metric tons of spherical graphite, representing around 5% of China's total spherical graphite production. It plans to expand that production to 40,000 metric tons over the next three years.

On January 7, 2022, Graphex announced plans to build a new graphite processing facility in Michigan to support American EV battery production, signing an exclusive MOU with Emerald Energy Solutions LLC. A final location decision is expected by the end of this month, and the company expects that the plant could be operational by the second quarter of next year, with an initial capacity of 10,000 metric tons per annum (TPA) of coated spherical graphite—the kind specifically used in EV batteries.

Plans are to ramp that up to 20,000 TPA to meet soaring demand. To be clear, Graphex has already positioned itself as a vertical power house in the graphite supply chain. An international company with their own capabilities to process at their own facilities in China, their own export license for these materials and are building their own final stage production facility in the US.


A Critical Ramp-Up at the Start of a Supercycle

Graphex margins so far look great to us, and that is what we'd expect when you have veterans in the field. In 2021, Graphex (OTC:GRFX) reported 28% margins and \$51 million in revenues. With an expansion in China underway, potential partnerships with global graphite producers for more localized raw material and plans afoot to build a new processing facility in the United States, the timing of the opportunity could be critical for shareholders.

One of the most important aspects from our perspective is that all of the Graphex processing technology is not only protected by patents—23 in total—covering everything from production methods and equipment design to environmental protection and graphene applications... But the barrier to entry for new local manufacturers can take many years to get past QA testing. Over the last 10 years Graphex has proven production and quality at scale.

Bringing all of this technology home is a win-win situation. For North American manufacturers, it could save tons of money at a time when rising prices for battery raw materials and disrupted supply chains for final processed materials are making things difficult.





With no current operational processing facilities in North America, graphite miners currently don't have the proven capabilities to upgrade from flake graphite to uncoated or coated spherical graphite—the kind that is ready for EV battery usage. Graphex has the proven capabilities to help fill that void on that lucrative supply chain, raw to final battery grade material costs range from roughly \$700 to over \$20,000 per metric ton. Potentially very lucrative indeed.

Beyond Michigan, Graphex (OTC:GRFX) may have longer-term plans to partner with auto supply chain companies for the production of coated spherical graphite, with downstream expansion into anode and battery production as well as to partner with other global raw graphite miners to help localize and solve supply chain issues. The world hasn't seen a commodities supercycle like this, and the Russia-Ukraine war is sending an already clear supercycle into what could become megacycle territory, from oil and gas, grains, and precious metals to industrial materials, and specifically battery materials that were already staring at a supply squeeze.

While China has traditionally supplied some 70% of the graphite we use, as of the end of 2021, new data shows that it has now secured over 80% of that market share. And one of the top 5 in China is the same company that is planning to bring it all home to America.

This isn't an easy game for new entrants because graphite is a complicated endeavor underpinning a \$3-trillion EV industry and what could be a vastly bigger energy storage industry. We're looking for the veterans, like Graphex-- with patents, margins, major expansion plans underway, and what could be the critical bridge to raw material at scale to deliver current supply today as well as help shape the industry's future into tomorrow.

Other Companies that Could Be Impacted by the Commodity Supercycle


Lithium Americas Corp. (NYSE:LAC, TSX:LAC) is one of North America's most important and successful pure-play lithium companies, making it a key frontrunner in the commodity price boom. With two world-class lithium projects in Argentina and Nevada, Lithium Americas is well-positioned to ride the wave of growing lithium demand in the years to come. It's already raised nearly a billion dollars in equity and debt, showing that investors have a ton of interest in the company's ambitious plans, and it will likely continue its promising growth and expansion for years to come. Especially if lithium prices continue to soar.

It's not ignoring the growing demand from investors for responsible and sustainable mining, either. In fact, one of its primary goals is to create a positive impact on society and the environment through its projects. This includes cleaner mining tech, strong workplace safety practices, a range of opportunities for employees, and strong relationships with local governments to ensure that not only are its employees being taken care of, but locals as well.

Turquoise Hill Resources Ltd. (NYSE:TRQ, TSX:TRQ) is another major miner in Canada's resource and mineral industry. It is a major producer of coal and zinc, two resources with distinctly different futures. While headlines are already touting the end of coal, zinc is a mineral that will play a key role in the future of energy for years and years to come. And due in part to the ongoing conflict in Ukraine, zinc has seen its price soar on fears of a looming supply squeeze.

In addition to its zinc operations, Turquoise Hill is also a significant producer of Uranium. Uranium is a key material in the production of nuclear energy, which many analysts are suggesting could be a major component in the global transition to cleaner energy. While the mineral has not seen significant price action in recent years, there are a number of new projects set to come online across the globe in the medium term, which could be a boon to Turquoise Hill, especially as commodity prices continue to climb.

Teck Resources (NYSE:TECK, TSX:TECK) could be one of the best-diversified miners out there. And in times like these, that's great news. With a broad portfolio of Copper, Zinc, Energy, Gold, Silver and Molybdenum assets, Teck is well positioned to capitalize on the commodity supercycle. With its free cash flow and a lower volatility outlook for base metals in combination with a growing push for copper and zinc



to create batteries, Teck could emerge as one of the year's most exciting miners, especially as metals prices continue to soar.

Teck has had a great year, climbing from just \$28 in January, to today's price of \$42, representing a 44% return. In addition to its positive trajectory, the company has seen a fair amount of insider buying, which tells shareholders that the management team is serious about continuing to add shareholder value. In addition to insider buying, Teck has been added to a number of hedge fund portfolios as well, suggesting that not only do insiders believe in the company, but also the smart money that's really driving the markets. And it's easy to see why. Even with its share price soaring, it's still at a P/E ratio of 10.13, with some saying it's still significantly undervalued.

And who could forget about Tesla Inc. (NASDAQ:TSLA)? In any discussion concerning commodities or energy, it's impossible to ignore Tesla's growing influence. Elon Musk is truly a visionary of the times. In fact, when Tesla released the first Roadster back in 2008, people were laughing at first-gen EVs. From his electric vehicle innovations and space ambitions to his forward-thinking approach to cryptocurrencies, Elon Musk may well become the first trillionaire, and Tesla shareholders are set to ride the wave.

Since then, Musk has transformed how energy is not only gathered, but stored, as well. Tesla has even paving the way for new lithium extraction techniques and pushing the limits of technological know-how to reduce its dependency on cobalt, an industry synonymous with human rights violations and conflict.

Tesla's stock price has had a turbulent year. The company has seen its share price fall from \$1200 at the beginning of 2022 to its current price of just under \$800. But some analysts are predicting that the dramatic surge in oil prices, and by extension, gasoline prices could result in demand destruction as consumers finally make the switch to electric vehicles. And that's great for Tesla.

Celestica (NYSE:CLS, TSX:CLS) is a key company in the lithium boom due to its role as one of the top manufacturers of electronics in the Americas. Celestica's wide range of products includes but is not limited to communications solutions, enterprise and cloud services, aerospace and defense products, renewable energy and health technology.

Thanks to its exposure to the renewable energy market, Celestica's future is tied hand-in-hand with the green energy boom that's sweeping the world at the moment. It helps build smart and efficient products that integrate the latest in power generation, conversion and management technology to deliver smarter, more efficient grid and off-grid applications for the world's leading energy equipment manufacturers and developers.

Suncor (NYSE:SU, TSX:SU) is another company that could benefit from the rise in commodity prices. Oil, in particular. In fact, it's just touched a 52-week high, and if prices continue to climb, so might its stock price. And fun fact, Canada is one of America's primary oil suppliers. Not only that, it's willing to ramp up supply to help offset the lost crude from the United States' import ban on Russian oil.

Suncor has seen its stock price rise by 24% already this year. Not only that, it packs a noteworthy dividend yield of 4.15%. The kicker here is that analysts see oil prices continuing to increase in the short-to-medium term, meaning Suncor's share price has some major upside potential still.

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Forward-Looking Statements

This publication contains forward-looking information which is subject to a variety of risks and uncertainties and other factors that could cause actual events or results to differ from those projected in the forward-looking statements. Forward looking statements in this publication include that the global energy transition will continue as anticipated and that electric vehicles will continue to grow in market share and acceptance; that demand for electric vehicle batteries and the component materials and minerals used to produce electric vehicle batteries will continue to grow significantly; that the market for graphite and related products will continue to expand and achieve double digit growth in the next several years ;that there will be shortages in China, U.S. and globally of the graphite necessary to produce electric vehicle batteries; that Graphex Group Limited (the "Company") can leverage its existing operations and reputation in China to capture market share of global graphite demand; that the Company can expand its business operations to the U.S. and European markets and gain significant market share for the supply of graphite for electric vehicle batteries; that the Company

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