



The Override

Every Landman Wants One!

Volume X, Issue III

May, 2016



Presidents Message

**Ernest Guadiana, Esq.,
LAAPL President**

Elkins Kalt Weintraub Reuben Gartside LLP

This is my last message to the membership as your President, and I cannot help but to reflect on this past year. Since I took over the Presidency, we have seen oil prices dip below \$30/bbl, only to “recover” to the current prices slightly above \$40/bbl.

I know all of us hoped this year would be more fruitful than the past, and although prices could be worse, this year nevertheless took a toll on many of us. We even saw some major players go into bankruptcy, having not been able to weather the storm of low oil prices.

Although everyone was supportive and optimistic last year, it seems such



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perspectives are waning. LAAPL understands the turmoil from this past year. As a result, we tried to help our members succeed in the current environment.

Cliff Clement’s presentation at our last meeting helped explain how our members can transition from oil and gas into the renewable sector (at least for the time being), and broaden our practices. Moreover, although our board had initially voted to raise the prices of our membership and luncheon meetings, due to the actual costs exceeding our ticket prices, seeing the effect this past year had on the industry we could not in good conscious implement these price increases. LAAPL has done well over the past years due to all our members’ support. Now is the time for LAAPL to give back.

I sincerely hope this next year is more fruitful than the past. I am excited to have J.R. Billeaud take over for me, and believe he will do an excellent job as President this upcoming year. I hope to see you all at the next meeting, and the golfers at the Mickelson Annual Golf Tournament this summer.

Meeting Luncheon Speaker

**“Paying Quantities in Today’s Market:
New ways to Look at an Old Concept.”**



Julie Carter, Esq., is a partner in the Sacramento law firm of Day Carter & Murphy LLP, which specializes in oil, gas, energy, and natural resources transactions and litigation. Julie represents and advises oil, gas, and energy companies on a full range of transactional issues, including acquisitions, surface access, leases, exploration and operational transactions, and regulatory compliance issues. She also examines title and issues title opinions in connection with the drilling of oil and gas wells, acquisitions, and financing transactions and has extensive experience in oil and gas related litigation matters.

Julie is a frequent author and speaker on oil and gas topics and has spoken numerous times at the West Coast Landmen’s Institute over the past 20 years. Most recently, Julie, together

*Luncheon Speaker
continued on page 2*



Opinionated Corner

Joe Munsey, RPL

LAAPL Director

Publications/Newsletter Co-Chair
Southern California Gas Company

We have not actually been given the official “nod” from President-Elect John “JR” Billeaud to continue as a Co-chair of the Newsletter/Publishing Committee for 2016 - 2017. We may have to opt for bending the knee to kiss the ring to officially be appointed; we will not lay prostrate before the highest office of the LAAPL to preserve our position.

While still controlling the barrels of ink and printing press, we would like to take this opportunity and express thanks to the following persons for making “The Override” a continuous success; i.) The LAAPL executive board, ii.) Ernest Guadiana, Esq., Chapter President, iii.) The legal community who have provided the content for our Cases/Issues of the Month, iv.) Cliff Moore, Independent, for his tireless efforts to provide editorial oversight; and v.) Star of this award winning publication, Randall Taylor, RPL, of Taylor Land Service, Inc.

To keep topics “lite” as time runs out for our term, it was thought a few [only two] jovial commentaries on the state of affairs would suffice.

While visiting Sequoia National Park to gaze upon the giant trees, we came across an article from The Associated Press written by Michelle R. Smith, published in *The Fresno Bee* on May 2, 2016. Evidently Messrs. Ringling and Barnum will be retiring the elephant act at its renowned circuses. We assume the circus brothers viewed the happenings at Sea World when they released the gentle orca whales from duties at the behest of PETA and perhaps came to

the conclusion that saga was coming soon to its “Greatest Show on Earth.” I am wondering why stop at freeing the orcas; all those fish imprisoned in glass cages should be next. But I digress.

Ronald B. Tobias, author of the 2013 book, *Behemoth: The History of the Elephant in America*, claims the attitude of Ringling and Barnum is directly a result of America’s understanding of elephants. “People no longer view them as performers” he said, “but sentient animals that are capable of a full range of human emotions.” That is what put the last nail in the coffin on the elephant act – elephants have a full range of human emotions.

There is a silver lining to this matter, according to Alana Feld, executive vice president of Feld Entertainment, who now owns the circus, claims horses, lions, tigers, dogs and kangaroos will still be fully employed to continue entertaining the humans. I would not be so sure of that, since elephants are capable of a full range of human emotions, certainly the same holds true of the others left behind.

We anticipate in due course of time the only acts left in a three ringed circus will be human performers; someone will come up with a research paper validating human performers also are capable of a fully range of human emotions. We may see the demise of the circus industry in our lifetime.

Someday a zoologist is going to happen upon a community of orangutans in a remote area of the earth cranking out a piece that surpasses Tchaikovsky’s Symphony No. 4 in F minor, or an orangutan cover band outperforming The Who’s “We Won’t Be Fooled Again.” That will finally be the proof in the pudding those in the lower animal kingdom are on the same footing as those who walk upright.

The last topic which needs no commentary since a picture says a thousand words, other than to note the vowel “o” has been replaced with the logo of the then Illinois Senator’s

presidential campaign.

I plan on drawing some of that fossil



fuel out of the ground, via the gas pump, and heading over to the Long Beach Petroleum Club for our last chapter luncheon for this term. We trust you do the same.



Luncheon Speaker
continued from page 1

with Josh Baker, Esq., presented at the 32nd Annual West Coast Landmen’s Institute on Actual, Constructive and Inquiry Notice When Conducting Due Diligence. Julie received a B.S. in minerals land management from the University of Colorado and her J.D. from the University of Oklahoma School of Law.



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Petroleum Landman

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Chapter Board Meetings

Cliff Moore, Independent LAAPL Chapter Secretary

The LAAPL Board of Directors and Committee Members did not hold its board meeting following our last Chapter meeting in March 2016.

The LAAPL Board of Directors and Committee Chairs normally hold its Board Meetings in the same room as the luncheon meeting after the speaker has wowed us. We encourage our members to attend the meetings to see your Board of Directors and Committee Chairs in action.

LAAPL Bids Farewell to Its Treasurer

Sarah Downs, RPL, will be stepping down from her “tenure” as the Chapter Treasurer; but not her membership with both the AAPL and LAAPL. Sarah exemplifies the professionalism of a landman, the least being willing to join a local landman chapter and plunge headlong into volunteering at the chapter level.

Furthermore, Sarah has continued to further her education as soon as she arrived to the California oil patch. Prior to entering the landman profession, she completed her undergraduate studies at San Diego State University, receiving a Bachelor’s of Science – Criminal Justice. In addition to attending AAPL and WCLI educational seminars, including setting for the RPL exam, Sarah received accreditation in green energy. The last couple of years she has been completing her graduate studies at Whittier Law School pursuing a Juris Doctorate, while still fulfilling her role as an officer of LAAPL. Along the way she and Jason added a daughter to the family unit.

The LAAPL applauds Sarah’s dedication to the chapter and her tenacity to continue her higher educational and professional endeavors. Please offer her a well-deserved gratitude of thanks for her work here at LAAPL and achieving her goal of a Juris Doctorate. Sarah can be reached sarah@downchezenergy.com, or at the next luncheon meeting.



Treasurer’s Report

Sarah Downs, RPL
Downchez Energy, Inc.
LAAPL Treasurer

As of 5/1/2016, the LAAPL account showed a balance of **No Report**

Deposits
Total Checks,
Withdrawals, Transfers
Balance as of 4/30/2009

Merrill Lynch Money
Account shows a total

We will begin accepting LAAPL membership dues starting on May 10th until July 1st. Click here for the Renewal Form for your convenience. Renewal is \$40.00; until further notified, please send your renewal notices along with your payment as follows:

Sarah Downs, RPL
LAAPL Treasurer
Downchez Energy, Inc.
419 Main Street #357
Huntington Beach, Ca 92648

Our Honorable Guests

Due to the industry’s doldrums, the list of guests who attended was not provided.

Lawyers’ Joke of the Month

Jack Quirk, Esq.
Bright and Brown

Editor: We were remiss by not contacting Jack early enough for him to offer his usual “Lawyer’s Joke of the Month.” We provide the following in lieu of:

“Be frank and explicit with your lawyer....it is his business to confuse the issue afterward.”

-J. R. Solly



Scheduled LAAPL Luncheon Topics and Dates

May 19, 2016

Julie A. Carter, Esq.

Day Carter Murphy LLP

Topic: "Paying Quantities in Today's Market: New Ways to Look at an Old Concept."

Officer Elections

September 15, 2016

TBD

November 17, 2016

TBD

New Members and Transfers

Cambria Rivard, JD

**LAAPL Membership Chair
California Resources Corporation**

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

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Partner

Ossentjuk and Botti

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Chevron USA Inc

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Bakersfield, CA 93311

Kevin Stubbs

Land Team Lead

Chevron USA Inc.

9525 Camino Medina

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Chris Flail

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Transfers

None to Report

Corrections

None to Report



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Mickelson Golf Classic Coming Soon

Jason Downs, RPL

LAAPL Mickelson Golf Classic Chair

Jason Downs, RPL, LAAPL's Golf Chair, cordially invites you to participate in the **2016 LAAPL Mickelson Golf Classic fundraiser to be held again @ Angeles National Golf Club in Sunland California on Friday, September 16th, 2016.** LAAPL will donate the net proceeds realized from the tournament to the R.M. Pyles Boys Camp, thus we encourage you to "sponsor" generously. Please return your checks with completed sponsorship forms and logos as soon as possible and no later than September 1, 2016, as only 48 golf reservations are available. Cocktail hour, buffet dinner, raffle and awards ceremony will follow. We look forward to your participation.

2016 Challenge, we want to increase the participants this year and are aiming to fill every golfer spot with sponsorship. Get your check books out for the **Pyles Boys Camp!**

Pre-registration is open for sponsors, \$250 per golfer sponsorship. Click here to sign up.



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Education Corner

EDUCATIONAL CORNER

AAPL's Home Study program allows members to earn continuing education credits at their own convenience and schedule. The courses cover the issues most relevant to today's landman and cost between \$30 and \$75 to complete.

To receive continuing education credits via a home study course:

- [Download or print out the course \(PDF format\)](#)
- [Answer all questions completely](#)
- [Submit the answers as instructed along with the appropriate fee](#)

If you have questions or would like more information, please contact AAPL's Director of Education Christopher Halaszynski at (817) 231-4557.

General Credit Courses:

Environmental Awareness for Today's Land Professional
Credits approved: 10 CPL/ESA/RPL/RL
\$75.00

[#101](#) Due Diligence for Oil and Gas Properties
Credits approved: 10 CPL/RPL/RL
\$75.00

[#102](#) The Outer Continental Shelf
Credits approved: 5 CPL/RPL/RL
\$37.50

[#104](#) Of Teapot Dome, Wind River and Fort Chaffee: Federal Oil and Gas Resources
Credits approved: 5 CPL/RPL/RL
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[#105](#) Historic Origins of the U.S. Mining Laws and Proposals for Change
Credits approved: 4 CPL/RPL/RL
\$30.00

[#106](#) Going Overseas: A Guide to Negotiating Energy Transactions with a Sovereign
Credits approved: 4 CPL/RPL/RL
\$30.00

[#108](#) Water Quality Issues: Safe Drinking Water Act (SDWA)/Clean Water Act (CWA)/Oil Pollution Act (OPA)
Credits approved: 4 CPL/ESA/RPL/RL
\$30.00

[#109](#) Common Law Environmental Issues and Liability for Unplugged Wells
Credits approved: 4 CPL/ESA/RPL/RL
\$30.00

Ethics Credit Courses: Two ethics courses are available. Each course contains two essay questions. You may complete one or both of the questions per course depending on your ethics credits needs. Each question answered is worth one ethics continuing education credit.

[#103](#) Ethics Home Study (van Loon) – 1 or 2 questions
Credits approved: 2 CPL/RPL/RL & 2 Ethics
\$15.00 per question

[#107](#) Ethics Home Study (Sinex) – 1 or 2 questions
Credits approved: 2 CPL/RPL/RL & 2 Ethics
\$15.00 per question

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2016 WEST COAST LANDMEN'S INSTITUTION

With the current state of the industry affecting all oil patches from coast to coast; the WCLI Board is currently discussing a one day format as way to reduce cost for all WCLI participants and sponsors. Currently the thought is to hold a one day seminar in Bakersfield's on a Friday; yet keeping our formal dinner for the night before. We are exploring using a superb industry partner's facilities as a venue for the seminar. The WCLI Board is anticipating by the end of May to either go dark this year or continue to pursue the one day seminar presentation option.



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Case of the Month - Right of Way



The Brown Act – Reminding Local Governments that the Sun Continues to Shine in California

Katherine Contreras, Esq., Associate
Law Firm of Nossaman LLP

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Transparency in government is a staple of American democracy. The Federal Freedom of Information Act and California's Public Records Act are two examples of laws that are intended to provide transparency for government's written information. But many (if not all) state and local governments have also enacted "sunshine laws," which generally require that government meetings be open and public. In California, the Ralph M. Brown Act was passed in 1953. Yet, despite having been around for over half a century, many local governments find themselves accused of running afoul of its provisions. In this post, I discuss some recent examples and provide a few takeaways local governments and the people they serve should keep in mind.

Once is Probably Not Enough

The City of Hesperia is fighting a Brown Act challenge to meetings it held for a controversial development project. According to Rene Ray De La Cruz's article "*Residents Claim Tapestry Meetings Violated Brown Act*," residents are upset because the City continued the meeting multiple times, allegedly without providing adequate notice or a new agenda.

It is too early to determine whether the council acted improperly. Even so, this situation reminds us all of the importance of proper notice. So what is proper notice? Is once enough?

- **72 hours** is the magic number – an agenda must be posted 72 hours prior to a regular meeting or one that is **continued more than 5 days**.
- **Notice of any adjournment** (i.e., continuation) must be posted **within 24 hours** of the original meeting.
- If the new meeting is more than **5 days later**, a **new agenda** must be posted 72 hours prior to the new meeting.

Think Twice Before Going Off Agenda

The Brown Act requires that every agenda include a brief description of the business to be discussed, whether in open or closed session. While members of the public are entitled to bring new items to the board's attention, the board itself usually cannot. And one judge in Marin County wants to make sure that doesn't happen. Nels Johnson's article "*Judge: Marin Supervisors violated open government law with housing briefing*" explains that the Marin County supervisors erred when they held a 26 minute "briefing" on housing issues which were not listed on the agenda. Apparently, the Board took no action, and only requested the briefing as a way to keep the public informed on the status of the County's housing plan. But the supervisors' good intentions were not enough. So what's a body to do?

- Keep **staff comments** limited to **responses** to questions or statements during the session, **brief announcements** or **requests for clarification**.
- If **non-agenda item** comes up, the comments must be **brief**.
- **If in doubt, cease discussion** and make a motion to place the topic on a **future agenda**.
- Consider a "**Manager's Report**" or similar agenda item as a catch-all. As long as there is no extended discussion and no action taken, this description is a proper agenda item.

Beware the Closed Session

The Brown Act acknowledges there are times when a public discussion is not always appropriate. For example, personnel decisions, labor negotiations and real property negotiations may be held outside the public's eye. But as the City of Santa Ana is finding out, there is a limit. In his *Voice of OC* article, Adam Elmahrek reports that the City Council is accused of violating the Brown Act by approving the City Manager's bonus in closed session. According to the article, the agenda stated only that the City Manager's performance evaluation would be discussed in closed session; the agenda did not reveal

any anticipated City Council action on the City's Manager's bonus. In addition to some of the problems we saw in Hesperia and Marin County, the City's action became subject to challenge because even if property agendized, it arguably didn't fall into the narrow list of subjects allowed for closed sessions:

- **Personnel** – appointment, employment, performance, complaints or dismissal of unelected employees.
- **Pending Litigation** – where the agency is a party or expect to sue or be sued.
- **Labor Negotiations** – Instructions on compensation.
- **Property Negotiations** – Price or payment terms.

For a more detailed discussion of these categories, see the California League of City's Guide to the Brown Act, available here.

It Isn't Easy Being Green

We're all trying to do what we can to go "paperless," and local governments are no exception. But what happens when technology and the Brown Act collide? Last month, the California Attorney General's Office issued an opinion on this very subject.

The Brown Act provides that agencies can post their agendas on their websites at least 72 hours before the meeting. As we all probably know, however, websites can and do crash. If the agency's website goes down for a portion of the 72 hours, is there a violation of the Brown Act? Apparently not, at least according to the Attorney General. As long as there has been "substantial compliance" with the Brown Act's notice requirements, the legislative body may still hold its meeting despite technical difficulties.

So why is a Brown Act discussion on a blog about Eminent Domain?

Well, for starters, every government project must be approved by the appropriate governing body at some point, often as part of the budget. And many projects must proceed through the CEQA process requiring additional meetings and approvals.

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Perhaps most relevant here, any agency acquiring property through condemnation must first pass a Resolution of Necessity, which typically involves both closed session discussion about the property-negotiation process and open session discussion and a public hearing to adopt the Resolution itself. All of these implicate the notice and agenda issues discussed above.

Closed sessions also become important in the right of way process, specifically the “property negotiations” and “pending litigation” provisions. These can both become problematic. For example, price and payment terms may be discussed behind closed doors, but when the contract becomes final, the information is subject to disclosure. Another consideration is when those negotiations become so entwined with potentially filing a condemnation action so as to fall into the “pending litigation” category.

The purpose of the Brown Act is to ensure that government conducts its business openly under the eyes of the citizens it serves. I’m sure no one wants to return to the days of “smoke-filled backrooms” but neither should the Brown Act be used as a vehicle to challenge unpopular, but otherwise legal, decisions. As this discussion illustrates, both agencies and members of the public should remember that it is not always what is done that causes the problem, but how it’s done.

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**How To Make Deductions From The Royalty Stream For Post-Production Expense
[Minimizing Liability While Improving the Company's Bottom Line]**

By Marlin K. Brown, CPL #3291

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While oil and gas producing companies are required to pay costs of producing liquid and gaseous hydrocarbons, many oil and gas leases set out certain costs that should be shared between Lessors (mineral rights owners who leased their land to oil companies) and Lessees (the oil companies who bought the rights to explore, drill for and produce oil and gas).

Past issues of The Landman (May/June, 1989; May/June, 1998, January/February, 2013 and others) have featured articles exploring the legal basis for making deductions for post-production expenses (“PPE’s”) and taxes. The information in these articles is useful for landmen to gain knowledge about the adjudication in the States which influence this area. However, once a landman has a sense of what items may be deducted under the applicable case law, the question remains as to how to work with his employer or client to actually implement such deductions.

Most oil and gas leases currently in force have a provision which says the Lessee pays all taxes on producing properties; then Lessee reimburses itself for the Lessor’s royalty share (equal to the royalty percentage) of such tax payments. Most companies use accounting software that includes one or more “slots” for inputting ad valorem taxes (local county property taxes, also called “school taxes”) on producing minerals, as well as a slot for local or state severance taxes. And virtually all leases specifically allow the Lessee to deduct the Lessor’s royalty share of those taxes from the royalty stream. Many companies deduct for these taxes.

However, depending on the adjudication and statute law in a State, and depending on the language in the leases, and depending on the circumstances of production, there may be many other items which may legally and properly be deducted. This article lists steps which may be followed to first find out if more deductions are possible, and then implement such additional deductions in a fair, consistent and defensible manner. It is recommended that you perform a study on your top 5 properties to determine feasibility.

There are 7 steps in finding out how much your company can benefit by deducting for post-production expenses. Once this work is done and the decision is made to proceed, implementation can follow.

Feasibility Study

1. **Adjudication:** Review applicable case law and build a table for the State or States in which your properties are located. This table presents applicable rulings in a brief form. See Table A. This is a list of rulings for California. You may need to enlist the aid of an experienced oil and gas attorney to determine from adjudication (and statute law, if any) what items are deductible in your State.
2. **Chart of Accounts:** Review the company’s Chart of Accounts and match line items with deductible expenses. Use Table B as a go-by and be guided by your findings from Table A. Some “direct” costs (example: metering costs) may be for a particular lease while other “spreadable” costs (example: gas plant serving several properties) are spread among several leases.
3. **Spreadable Expenses:** If the company has both direct and allocated spreadable expenses, build a spreadsheet like the example shown in Table C. Spreadable expenses are costs incurred at the field or regional level, which are split out (allocated) to individual properties. For example, the telephone bill for the office at which the management for a group of properties is done might be allocated out to each of those properties in the same proportion that the barrels and MCF’s sold from each property bear to the total barrels and MCF’s sold from those properties.
4. **Lease Review:** Review your sample leases and list deductions for each. Use the checklist attached as Table D-1. Example lease language is shown in Table D-2. Note any prohibited items.

5. Field Conditions: Interview the company's field personnel and ask the questions shown on Table E for each lease.
6. Unit Allocation: Determine whether any tracts in a unit are exempt from deducting (see Table F) and calculate their percentage of production.
7. Spreadsheet: Using expense numbers for a particular month (from your Accounting folks), build a Lease or Unit spreadsheet for each lease or unit. Include the findings from Tables A, B, C, D and E. Table F shows how to allocate among leases in a unit which has both leases allowing deductions, and leases which do not allow deductions.

If deduction amounts are modest, the work needed to make deductions on an ongoing basis may not be justified. However, savings of tens of thousands of dollars monthly may justify the time needed to perform the calculations.

Implementing

1. If the company is not already deducting for PPE, they will need to notify their royalty owners of the intention to do so. Enclose a message in the same envelope with each of two succeeding royalty checks. If the company is already deducting for some post-production expenses and taxes, there is no need for additional notification.
2. Obtain an expense report for each lease for the previous production month from Accounting when available.
3. If the company has both direct and allocated lease expenses, build a spreadsheet like Table C to properly allocate expenses to each lease.
4. Insert expenses for each lease in a different spreadsheet.
5. Furnish either a total lease deduction number or a per-barrel deduction number to Accounting for inputting into software (see "Two Ways to Calculate Royalty Deductions" below).
6. A summary report may be prepared listing all leases and showing amounts of deductions.

Other Matters

- * In California, Overriding Royalty Interests are required, per adjudication, to bear their proportionate share of PPE's, regulatory costs, electricity and taxes.
- * If a lease specifically prohibits deductions, that prohibition controls. However, if a lease is silent as to deductions, the California adjudication allows deductions.
- * Lease provisions include any clauses located in exhibits or addendums to the lease.

Cautions

- * We recommend against deducting for State, Indian, University or federal leases unless they specifically allow deductions or unless there is adjudication which allows same.
- * Check the understandings of the accounting folks and the field people as to the exact meaning of individual items on the company's Chart of Accounts.
- * Stay cognizant of gross versus net and use the proper amounts when deducting and reporting. Study the following, which clarifies this dichotomy.

Two Ways to Calculate Royalty Deductions

Assumptions:

200 BOPD x \$60 per barrel = \$ 12,000 Gross Daily Income
 x 30 days = \$360,000 Gross Monthly Income

Royalty Burden = 16.667%

LOE for that month (not including roy.) = \$240,000 Lifting Costs
Deductible portion = \$ 48,000 Gross Deductions

Lessor pays 1/6th via holdbacks
 from royalty disbursements = \$ 8,000 Lessor's Net Share of Deductions
Lessee pays = \$40,000 Lessee's Net Share of Deductions

Method 1

Gross Income x 16.667% Royalty = \$ 60,000 Gross Royalty
 - Lessor's Net Share = \$ 8,000
 = Lessor's Net Roy. = \$ 52,000 Payable

Method 2

Gross Income - \$48,000 Gross Deducts = \$312,000
 x Royalty Amount 1/6th = \$ 52,000 Payable

Please be careful to distinguish between gross deductions and Lessor's net share of deductions, as they are often confused.

Conclusions

1. Your client or employer may save money by properly deducting, so it is a good use of time to run a study as to how this can be done.
2. You will probably need a Landman, an accountant and an attorney on your study team.
3. This is a complex topic. Remember the pitfalls and be ready to seek expert advice.

Table A

Ruling of California Courts On Royalty Deductions

Key Cases

Alamitos Land Co. v. Shell Oil Co. 3 Cal. 2nd 396, 402-403 (Cal. 1935)

- Royalty is assessed at the wellhead, not at some later point downstream, unless the lease provides otherwise.

“...the words ‘petroleum oil’ and ‘royalty oil’ found in the paragraphs relating to the royalty to which plaintiff was entitled meant the crude petroleum well fluid as produced, together with such water and other foreign matters as may be emulsified therein...”

Western Gulf Oil Co. v. Title Insurance and Trust Co. , 92 Cal. App 2d 25 (Cal Dist Ct. App. 1949)

- Unless the lease explicitly requires the Lessee to handle the lessor’s oil downstream of the wellhead, the Lessor has that responsibility.

“Where oil and gas lease provided that lessee should pay lessor as royalty one-eighth of value of all oil removed, after making deduction for temperature, water and base sediment, at posted market price, or, at lessor's option, one-eighth part of the oil, and lessor elected to take one-eighth of the cash value of oil produced, lessor was required to bear its proportionate share of cost of dehydration of oil produced.”

Vedder Petroleum Corporation, Limited, v. Lambert Lands Co., 122 P.2d 600 (Cal Ct. App. 1942)

- When the lease is silent as to liability for post-production expenses, royalty is payable on “oil” at the wellhead in its produced state (untreated), and any treatment thereafter is made at joint expense of Lessor and Lessee.

“The value of all oil produced and saved from wells within oil and gas lease requiring lessee to pay lessor monthly as royalty the equal one-sixth part of value of all oil produced and saved from wells was the value of the crude oil as it was produced from the mouth of the well.”

Vedder Petroleum Corporation, Limited, v. Lambert Lands Co., 159 P 2d 435 (1946)

- Lessors are responsible for their proportionate share of overhead and field expenses which are attributable to post-production activities.

“The general overhead and the general field overhead expenses were necessary elements in the operations carried on by the lessee in producing and shipping oil, of which the process of dehydration was a relatively minor but necessary part. No good reason appears why some part of this necessary general expense should not be charged to dehydration, which was a part of the operations being carried on.”

Walker v. Pacific Energy, Los Angeles County Superior Court, (1989).

- Electric charges are deductible when internal combustion engines (which run on lease gas) are outlawed by Local air quality rules.

Atlantic Richfield Co. v. State of California, 214 Cal. App. 3rd 533, 541 (Cal. App. 1989)

- Royalty owners must pay their proportionate share of costs downstream of the wellhead, unless the lease specifically provides otherwise.

- Laches (cannot deduct because did not do so in the past) is obviated when economic or operational circumstances change.

Other Cases

Myers v. The Texas Co., 6 Cal. 2d 610 (1936)

- * Depreciation of equipment associated with post-production activities is a deductible cost.

Whepley Oil Co. v. Associated Oil Co., 6 Cal. App. 2d 94 [44 Pac.(2d) 670]

- Lessor is responsible for its proportionate share of cost of processing natural gas liquids downstream of the wellhead.

Axis Petroleum Co., et al v. Taylor 1 Cal. App. 41 [108 Pac. (2d) 978]

- Lessor is responsible for its proportionate share of cost of processing natural gas downstream of the wellhead.

Tenneco West, Inc. v. Marathon Oil Co., 564 F. Supp. 381 (C.D. Cal. 1983).

- * Lease language on sharing of taxes between Lessor and Lessee controls.

Crocker National Bank v. McFarland Energy, Inc., 140 Cal. App. 3rd 6, 189 Cal. Rptr. 302 (1983).

- Lease language requiring Windfall Profits Tax to be paid by Lessee and Lessor in their proportionate shares controls.

Transport Oil v. Bush, 114 Cal. App. 152 1 P.2d 1060 (1931)

- * Express language in a lease which requires lessee to pay all production taxes controls.

Table B Sample Chart of Accounts

<u>Line Item</u>	<u>General Deductibility</u> (Subject to Lease Terms, Field Conditions and Adjudication)
Accounting	Partly
Bonding	Not
Chemical	Deductible
Communications	Partly
Dehydration of Oil	Deductible for water remaining after free water drainoff
Easements	Partly
Electricity	Partly or Fully Deductible (See discussion below)
Emissions Controls or Prevention	Deductible
Engineering	Not
Environmental Compliance	Deductible
Environmental Fees	Deductible
Flare	Deductible
Franchises for Pipelines	Deductible
Fuel Gas	Deductible

Gas Liquids Separation	Deductible
Gas Treating	Deductible
Geological & Geophysical	Not
Heater Treater	Deductible
Insurance	Partly
LACT	Deductible
Legal	Not
Marketing	Deductible
Metering	Deductible
Office	Partly
Pipeline	Deductible
Production Equipment	Not
Rent	Partly
Regulatory Compliance	Deductible
Regulatory Fines	Not
Rods and Tubulars	Not
Royalty Payment (accounting)	Partly
Salaries (Company)	Partly
Salaries (Contract)	Partly
Tank Bottom Disposal	Deductible
Taxes (Income)	Not
Taxes (Mineral)	Deductible
Taxes (Excise)	Deductible
Taxes (Severance)	Deductible
Treating Equipment	Deductible
Trucking (General)	Partly
Trucking (Oil Sales)	Deductible
Vacuum Truck	Deductible
Vehicles	Partly
Wastewater Disposal	Deductible
Wastewater Cleaning or Treatment	Deductible
Water Injection	Not
Water Purchase	Not
Well Drilling	Not
Well Plugging and Abandonment	Not
Well Pulling & Workover	Not

The findings shown in the “General Deductibility” column above refer to items listed in the “Line Item” column for operations in the State of California. Such findings are the professional opinion of, and the sole responsibility of the author, Marlin K. Brown, based on his 22 years of practice in performing these deductions.

Whether a particular line item is deductible depends upon your findings as to the Lease Terms, the Field Conditions and the Adjudication.

The items labeled “Partly” may need to be allocated. This is done by using a column in the lease or unit spreadsheet. Assign a percentage based on the results of your field personnel interviews. General allocation of items categorized as “Overhead” (see Table D) is 30% to 50%, depending on how much of the overall work of the company is expended in post-production tasks.

Several rules of thumb apply when building this table.

- A. Water disposal costs and water cleaning costs are generally deductible, subject to precedents established in your state’s adjudication. Water injection costs (for a pattern waterflood) are not deductible.
- B. Electricity costs may be partly deductible if a portion of the electric use is devoted to post-production expenses. All electricity costs may be deductible if local air quality regulations prohibit using produced gas to power internal combustion engines.

- C. Lease terms may limit “dehydration” deductions to some number of cents per barrel of “oil”. Pursuant to multiple court rulings, the term “oil” in this context means “produced fluid”, rather than “liquid hydrocarbons sold”.
- D. Capital expenses attributable to post-production functions, are amortizable over a 60 month time period, per the IRS. Create a new spreadsheet which deducts 1/60 of each new capital expenditure for post-production functions for the next 60 months, then ends.

Table C
Spreadable Expenses

Allocating expenses which are NOT broken down by lease.

(Example)

LEASE	BBLS SOLD	% ALLOC	Accounting Total	Communications Total	Salaries Total	Wastewater Dispos Total
			\$3,000.00	\$1,000.00	\$15,000.00	\$5,000.00
Black	5000	62.5	\$1,875.00	\$625.00	\$9,375.00	\$3,125.00
Gray	2000	25	\$750.00	\$250.00	\$3,750.00	\$1,250.00
White	1000	12.5	\$375.00	\$125.00	\$1,875.00	\$625.00
Total	8000	100	\$3,000.00	\$1,000.00	\$15,000.00	\$5,000.00

Add amounts in columns D, E, F and G to the Table F spreadsheet you build for each of these leases.

Table D
Part One – Lease Review

Read each lease and note which deduction items are specifically addressed; either to allow or to disallow. Then construct a matrix as shown below.

Lease Name _____

<u>Item</u>	<u>Comment</u>
BS & Water	Royalty clause. Normally deducted by refinery, so the landowner’s deduction share is already included.
Oil Treat/Dehydrat	Oil royalty clause. Often allows “treating” or “dehydration” and sometimes limits amounts of deduction for dehydration to X cents per barrel.
Oil Transportation	Oil royalty clause.
Gas Treat/Compress	Gas royalty clause.
Gas Transportation	Gas royalty clause.

Gas Liquids	Gas royalty clause. Often includes a fee for plant overhead, usually a percentage, the net of which is the deemed royalty amount for the lease.
Free Fuel	Oil or Gas royalty clause. Allows deductions for all electric power, if required by governmental mandate; and if production includes enough gas to run engines.
Alternative Power	Oil or Gas royalty clause or another clause later in the lease. Specifically provides for Lessors to bear proportionate share of electric costs if mandated by governmental authority.
Property Tax	Tax clause. Mineral rights taxes are subject to deductions. General ad valorem taxes are sometimes subject to deductions, or are paid solely by Lessor. Industry practice is for Lessee to pay all property taxes and to deduct for Lessor's royalty share of all property taxes paid.
Other Taxes	Tax clause. Usually either limited to severance taxes, or includes broad language which takes in all other taxes related to operations which are paid by Lessee. Does not include income taxes or capital gains taxes.
Sole Cost	Usually toward center of lease. Specifies that all costs are borne by Lessee. Since numerous other clauses (as shown on this list) in most leases provide for Lessor to share specific costs, this general statement applies to costs incurred prior to the wellhead, and Lessee's share of post-production costs, taxes and power; as provided by the lease language or by adjudication.
Prohibition	Occasional leases specifically prohibit certain deductions. Such language controls over principles established by adjudication or by industry practice.

Table D Part Two—Deductions Languages in Leases

Lease excerpts which illustrate provisions in leases follow. This language is quoted verbatim from a Union Oil Company of California standard form Subsurface Oil and Gas Lease dated October 30, 1959 and recorded at Book M388, Page 119 of the Official Records of Los Angeles County, California. This leases is currently in force.

Language regarding deductions is underlined. Commentary is in capital letters enclosed in brackets [].

1. The term "royalty share" wherever used herein shall mean the fraction one-sixth (1/6). [LESSOR IS RESPONSIBLE FOR 16.6667% OF POST-PRODUCTION COSTS, ELECTRICITY AND TAXES, WHICH LESSEE INITIALLY PAYS, THEN REIMBURSES ITSELF OUT OF 16.6667% OF THE GROSS ROYALTY ATTRIBUTABLE TO THIS LEASE.]
2. Lessee shall pay to Lessor as royalty on oil the royalty share of all oil produced [MOST, BUT NOT ALL COURTS HAVE INTERPRETED THIS WORDING TO MEAN THAT ROYALTY IS PAYABLE AT THE WELLHEAD, AND THAT ALL ACTIONS PERFORMED BY THE LESSEE DOWNSTREAM FROM THE WELLHEAD ARE PERFORMED ON BEHALF OF THE LESSEE AND LESSOR AT THEIR RESPECTIVE NET REVENUE SHARES OF RESPONSIBILITY. SOME STATES HAVE ADJUDICATION WHICH CONCLUDES THAT ALLOCATE COSTS DIFFERENTLY.], saved and removed from the leased land. Lessee shall purchase Lessor's royalty oil at Lessee's public posted market price currently offered and paid in the field in which the leased land is located for oil of like gravity and quality the day the oil is shipped from the leased land. In the event there is no such public posted market

price, Lessee shall purchase Lessor's royalty oil at the same price the company or companies purchasing the majority of the oil in the field in which the leased land is located shall be paying for crude oil of like gravity and quality. In the event Lessee shall treat the oil produced for the purpose of making the same marketable, Lessor shall pay the royalty share of the cost of such treating. [ALL OF THE MANY COSTS CLASSIFIED AS "OIL TREATING" ARE DEDUCTIBLE.] In determining the gravity, quality and quantity of oil purchased, the methods and practices which are usual and customary among major oil purchasing companies shall be followed and the customary temperature corrections and deductions for injected oil, water and other foreign substances shall be made. [LESSEE MAY DEDUCT FOR B, S & W ADJUSTMENTS IF THEIR PAYMENT FROM THE CRUDE PURCHASER DOES NOT ALREADY INCLUDE SUCH AN ADJUSTMENT, WHICH IT NORMALLY DOES.]

Lessee shall not be required to account to Lessor for or pay royalty on oil, was or other hydrocarbon substances used by Lessee in its operations hereunder, including but not limited to, fuel lifting, injecting, gathering, compressing for processing and processing purposes, and Lessee may use such substances free of charge. [ROYALTY IS NOT DUE ON BOOK INCOME FOR GAS "SALES" TO THE LESSEE ITSELF FOR LEASE OR PLANT FUEL.] In no event shall Lessee be liable to Lessor for its failure or inability to save any of said substance, or for shrinkage or loss thereof, and royalty shall not be payable in respect to any of such substances lost through evaporation, leakage, fire or otherwise.

In the event Lessee in its operations hereunder shall substitute fuel or power for fuel obtainable from the leased land or land with which the leased land may be pooled, Lessee shall be entitled to deduct from the amount of increased royalty accruing thereby to Lessor the royalty share of the cost of such other fuel or power so substituted; provided, however, that no deductions therefore shall in any event exceed the amount of such increased royalty. [COSTS FOR ALL ELECTRIC POWER IS FULLY DEDUCTIBLE AS LONG AS THE DEDUCTION DOES NOT EXCEED THE ROYALTY AMOUNT.]

3. Lessee shall pay to Lessor as royalty on gas the royalty share of the net proceeds derived from the sale of gas produced hereunder, after deducting delivery costs. [COSTS FOR TRANSPORTING GAS TO A GAS PLANT ARE DEDUCTIBLE] and also the royalty share of the value at the field market price of any gas used by Lessee in operations other than those conducted under this lease. Nothing in this agreement contained, however, shall require Lessee to save or market gas from the leased land unless there shall be a surplus above lease requirements and a market at the well for the same.

Lessee shall have the right to treat or cause to be treated all or any portion of the gas produced from the leased land for the purpose of extracting gasoline or other content thereof, and for such purpose Lessee may transport or cause to be transported to a gasoline extraction plant on other land all or any portion of such gas where it may be commingled with gas from other properties. Lessee shall meter such gas so transported and such meter readings together with tests made of the gasoline and other contents of such gas at approximately regular intervals, at least once each month, shall furnish the basis for computation of the amounts of such gasoline or other hydrocarbons, and of the residue gas to be credited to this lease. Gas actually and reasonably used or consumed or lost in the operation of any such extraction plant shall be free of charge and Lessee shall not be held accountable to Lessor for that proportion of the gas so used, consumed or lost which, on the basis of the quantity determinations made as above stated, is reasonably estimated to come from the leased land.

4. In the event Lessee shall extract in a plant operated by it gasoline or other hydrocarbons from the gas produced from the leased land, Lessee shall pay Lessor forty percent (40%) of the Lessor's royalty share of the value, as hereinafter defined, of the gasoline or other hydrocarbons credited to this lease from the gas so treated. [LESSEE PAYS ROYALTY ON 40% OF THE GROSS ROYALTY FOR GAS LIQUIDS IF IT OPERATES A GAS PLANT THAT PROCESSES THE RAW GAS FROM THE LEASE.] The value of such gasoline or other hydrocarbons shall be deemed to be the value of such gasoline or other hydrocarbons at prices currently offered and paid by major purchasers for gasoline or such other hydrocarbons of like specifications and quality in the district. If gasoline or other hydrocarbons is extracted by a third party on a basis whereby a royalty is reserved to Lessee, then Lessor shall be entitled to the value of Lessor's royalty share of such reserved royalty.

5. All work done on the leased land by Lessee shall be at Lessee's sole cost and expense, and Lessee agrees to protect said land and Lessor from claims of laborers and materialmen resulting from Lessee's operations hereunder, and Lessor may post and keep posted on said land such notices of nonresponsibility as Lessor may desire to protect said lands against liens. [SINCE MULTIPLE PROVISIONS IN THIS LEASE, AND MOST OTHER LEASES, REQUIRE THAT THE LESSOR PAY ITS SHARE OF CERTAIN COSTS, AND SINCE THAT REQUIREMENT DIRECTLY CONTRADICTS THE APPARENT MEANING OF THE FIRST CLAUSE OF THIS PARAGRAPH, COURTS HAVE HELD THAT THE REQUIREMENT IN THE FIRST CLAUSE OF THIS PARAGRAPH APPLIES TO EXPLORING AND PRODUCING, AND NOT TO ACTIVITIES DOWNSTREAM OF THE WELLHEAD, SUCH AS TREATING, TRANSPORTING AND MARKETING, AS WELL AS ELECTRICITY, TAXES AND OTHER GOVERNMENTALLY-REQUIRED COSTS.]

6. Lessee shall pay all taxes levied on its improvements and personal property. Lessor shall pay all taxes and assessments on the leased land, exclusive of Lessee's mineral rights therein, and on all other improvements and personal property thereon. All increase in the taxes and assessments on the leased land or, if Lessee shall have quitclaimed a portion thereof, on such part thereof as it retained by Lessee under this lease, caused by or resulting from the discovery or production of oil, gas or other hydrocarbon substances thereon and therefrom, whether assessed upon the leased land as a whole or as mineral rights or otherwise, and all charges and taxes of whatsoever kind or collected by reason of the production, sale or removal of oil, gas or other hydrocarbon substances from the leased land shall be borne by the parties hereto in the proportion of the royalty share by Lessor and the remainder by Lessee. [BOTH THE MINERAL RIGHTS PORTION OF AD VALOREM TAXES, AND "ALL CHARGES AND TAXES OF WHATSOEVER KIND ..." ARE DEDUCTIBLE. LESSEES TYPICALLY PAY NUMEROUS COSTS DIRECTLY TO GOVERNMENTAL AGENCIES, OR INDIRECTLY IN THE FORM OF COMPLIANCE EXPENSES, ALL OF WHICH ARE DEDUCTIBLE.] If Lessor shall fail to pay any taxes, assessments or charges required to be paid by Lessor, Lessee may at its option pay the same and in such event Lessee may reimburse itself for such taxes, assessments or charges so paid by it from any royalties or rentals accruing hereunder.

Table E Field Conditions Affecting Deductibility

For each lease or unit, ask the field superintendent in charge the following questions. Suggest you perform a site reconnaissance for each lease prior to asking these questions, and note any factors which appear to be anomalous to normal operations.

Lease Name _____

DO YOU:

- Heat produced fluid?
- Heat oil?
- Gravity? Use diluent?
- Water injection or wastewater disposal?
- Treat produced fluid with chemicals?
- Which chemicals?
- Treat produced gas to remove gas liquids? Compression? Lower temperature?
- Treat produced gas to remove sulphur dioxide?
- Treat produced gas to remove carbon dioxide?
- Treat produced gas to remove nitrogen?
- Sell dry gas to utility company?
- Gas payment made net of a meter fee?
- LACT owned by company or purchaser?

Flare gas?
More than one processing facility for this lease (Ex: gas plant, central oil processing facility)?
How is oil moved to market—truck? Pipeline?
Who owns/maintains sales pipelines? Easement costs? Franchise costs?
Lease electrified?
Generate electricity on site?
Use internal combustion engines?
Engines run on field gas?
Purchase gas from a utility company?
Purchase makeup water from a neighbor or a utility company?
Monitor groundwater?
Ongoing environmental remediation?
Periodic environmental testing or monitoring expenses (not including well tests)?

Table F
Unit Spread Sheet

Tract	BBLs Sold	Percentage	Amount to Deduct \$10,000.00 (from spreadsheet)
Federal Lse	1500	30	\$0.00
State Lease	2000	40	\$0.00
Private Lease	1250	25	\$2,500.00
Private Lease	250	5	\$500.00
Total	5000	100	

Short Bio for Marlin K. Brown, Certified Professional Landman #3291 (since 1985):

- *Landman for 39 years.*
- *Owns The Bugle Group, LLC, a land consulting firm*
- **DEDUCTIONS PRACTICE:**
 - *68 clients have saved over \$63 Million net*
 - *over 23 years*
 - *with **ZERO** lawsuits*
 - *while protected by a bond for \$1 Million*
- *Former Director for AAPL; former Chair of the Certification Committee of AAPL*
- *BA and MA--University of Texas*

Mr. Brown can be reached at buglegroup@yahoo.com.

LAAPL Interview

LAAPL Contributing Writer Publishes Book

Manning Wolfe is a frequent LAAPL contributor, author, and attorney. Her debut legal thriller, Dollar Signs: Texas Lady Lawyer vs Boots King, is inspired by an actual client's file involving an imposter landman [emphasis added] who does the dirty work for a Goliath advertising corporation.

Editor: Manning, give us the story line.

Manning: The main character, Merit Bridges, is an attorney and widowed mother in Austin, Texas who takes on the shady corporation threatening her client. Boots King's simple charge is, "Stop her!" Merit and her team – including Betty, a mothering office manager with a Texas size attitude – struggle to stay alive, while they navigate a labyrinth of legal issues, and prove once again that you don't mess with a Texas lady lawyer.

Editor: So Manning, any good buzz on the book so far? Free feel to toot your own horn.

Manning: Only because you did the prodding. The award winning debut novel has received numerous accolades from prominent authors in the industry:

- "A legal thriller not to be missed...Manning Wolfe just put herself on my list of must-read authors." – Mark Pryor, Hugo Marston Novels
- "Move over, John Grisham. There's a lady lawyer in town." - Elizabeth Garcia, Deputy Ricos Tales
- "This novel is smart, funny, moving, and entertaining as hell." - Jesse Sublett, 1960's Austin Gangsters
- "A great read, and Texas crime fiction has a new star." – Bill Crider, Dan Rhodes Mysteries
- "Pages smoke like burnt fried chicken grease on a Saturday night... This one, my friends, is a non-putter-downer!" - George Wier, Bill Travis Mysteries.

Enough accolades?

Editor: Enough, got the drift, appears you have written a Texas size thriller. Ummm..." Pages smoke like burnt fried chicken on a Saturday night..." must be Texas lingo. Many of our West Coast readers probably glossed over that comment, they would prefer, "Pages steamed like fresh brown rice served up at the local Vegan cafe." Just saying.

Also, we see an imposter landman as part of the real life story. I guess this villain was not aware of the high ethics professional landmen of the American Association of Professional Landmen hold or he would have attempted to masquerade under a different profession. Care to elaborate which profession?

Manning: Not at this time, let your imagination run wild.

Meanwhile, Manning is working on a number of novels in the Texas Lady Lawyer series and will be publishing the second, Green Fees: Texas Lady Lawyer vs Brown Zars later in 2016.

Manning is a graduate of Rice University and the University of Texas School of Law. She makes her home in Austin, Texas with her mate Bill where she specializes in business and energy law.

Visit her website at: www.manningwolfe.com.

Dollar Signs is available on Amazon, at Barnes and Noble, and Indie Bound, or go to: <http://www.amazon.com/Dollar-Signs-Texas-Lawyer-Boots/dp/1944225005>



MEMBERSHIP RENEWAL APPLICATION

Name of Member _____ Spouse _____
(First, Middle, Last) (First, Last)

Title _____ Independent In-House Years as a Landman _____

Employer & Address _____

Business Phone _____ Fax _____ Cell _____

e-mail _____

Previous Employers _____

Home Address _____ Home Phone _____

Per the Los Angeles Association of Professional Landmen's By-Laws I am renewing as an
 Active Member Associate Member Life member Honorary Member

Are you interested in working on any of the following with the LAAPL?
 Board of Directors Golf Tournament Other as needed

Are you a member of the American Association of Professional Landmen? Yes # _____ No
Note your AAPL professional designation(s) CPL # _____ RPL # _____ RL # _____ ESA # _____

I hereby submit for renewal membership in the *LOS ANGELES ASSOCIATION OF PROFESSIONAL LANDMEN*, an independent non-profit association dedicated to the understanding, promotion, and advancement of professional Landmen in the State of California, and their fellow workers in the petroleum industry. I attach the annual dues of Forty Dollars (\$40.00) for the fiscal year commencing July 1st.

Date _____ Signature of Applicant _____

For LAAPL Use Only

Date Received: _____ Amount Received: _____ Check Number: _____

Dues accepted for period: _____

Please return this form along with your check payable to the Los Angeles Association of Professional Landmen [LAAPL] to:

Cambria Henderson, OXY USA Inc., Membership Chair
301 E. Ocean Blvd., Long Beach, CA 90802
Long Beach, CA 90802
Cambria_Henderson@oxy.com (562) 495-9373