



The Override

Every Landman Wants One!

Volume XIII, Issue III

March, 2021



Presidents Message

Randall Taylor, RPL
President
Taylor Land Service, Inc.

Hello fellow LAAPL members. As of this writing, there are a few items which may give you hope in these troubling times:

- The Kern County Board of Supervisors voted to approve the re-implementation of their County's world-class oil and gas permitting program! See the article elsewhere in this newsletter, and be sure to click and watch the video!
- ANS West Coast crude is \$67.51, WTI Crude is \$65.67, Brent Crude is \$69.18, and Natural Gas is \$2.61
- There are 2,060,000 signatures on the petition to remove Gavin Newsome from the Governors office. Only 1.5M were required, and 1.8M have been verified. I can't help but think there are a majority of people in both parties who would like to see this political hack get booted! With the signatures that have been obtained, at least it will be put to a ballot.

The cynic in me wonders if we can even have a fair election in this state after what we saw in November of last year, but we can hope.

In case you have missed them, our AAPL President, Lester Zitkus, CPL has written two masterpiece letters; one to the Department of the Interior imploring them to suspend or rescind our feeble-minded President's Executive Order No. 3395 to allow for energy permits and approvals on federal land. And the other was a message to the membership of AAPL regarding the Texas Power Outage. If you haven't read either

Presidents Message
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Meeting Luncheon Speaker

Robert D. Coviello, Esq., of Coviello Mediation Services and ADR Services, Inc. will present, "Alternative Dispute Resolution, American Arbitration Association and Employment Litigation"



During the past fifteen years as mediator, Mr. Coviello has worked on a number of cases involving a variety of complex issues. Relying on his extensive negotiation and trial experience, Mr. Coviello has mastered the art of bringing parties together to resolve their conflicts. He has mediated hundreds of cases in nearly every type of employment-related dispute, including: wage & hour class actions; numerous FEHA matters, including sexual harassment; all forms of discrimination and retaliation claims; a variety of written employment contract disputes and commission claims; and a great

Luncheon Speaker
continued on page 2





Opinionated Corner

Joe Munsey, RPL
Director

Publications/Newsletter Co-Chair
Southern California Gas Company

Remember the following numbers, in the words of the current Press Secretary for the current President, “we will circle back with you” on the matter.

- One (1)
- One thousand nine hundred (1900)
- One trillion (1,000,000,000,000)

Have you adjusted to the passage into Daylight Savings Time? No need to adapt if your body is not responding, we gain that hour back come fall.

Now circling back to discussing the above referenced numbers.

One (1) - The current Administration’s New Green Deal has in the works the doubling of America’s offshore wind farms. Without exerting the energy to discuss concessions for offshore acreage, permitting, construction and operations, etc. meeting the goal of doubling offshore wind farms in the next four years is doable. There now exist one operating commercial offshore wind farm; the 30-megawatt Block Island Wind Farm off the coast of Rhode Island, which began operation in 2016. Pull off one fully operational offshore wind farm by 2022 and bingo – the current Administration has met its goal.

One thousand nine hundred (1900) – Robert Bryce in a recent on-line article informs us that within the U.S. portion of the Gulf of Mexico there is about 1,900 oil and gas platforms. If 1900 offshore oil rigs in the Gulf of Mexico are a blight to the New Green Deal crowd, what would be the amount of offshore wind platforms to qualify for wind farm blight?

According to Mr. Bryce, in an October article in *E&E News*, Maine, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Maryland and Virginia, have set goals for offshore wind “rigs” capable of producing 28.5 gigawatts and another 7.5 gigawatts. Let’s see here, doing the math.....28.5 gigawatts + 7.5 gigawatts = 36 gigawatts of pure renewable green energy. How many offshore wind platforms need to be built to fill that order of magnitude? The \$64,000,00 answer is - you need about 3,600 offshore platforms. Goodness, the Eastern Seaboard alone doubles the number of platforms as are now in the Gulf of Mexico. Well, wind is free, and electricity produced from those platforms theoretically should be free. An Eastern Seaboard congested with wind farm platforms vs free, I am going with “free” in order to turn a blind eye to wind farm platform blight.

One Trillion (1,000,000,000,000) – first, convert that figure into seconds and figure out how many years are in one trillion seconds. Let’s see here, doing the math...one trillion seconds converted to years = 31,688.74 years. The next time we hear a trillion dollars here, a trillion dollars there, keep in mind the conversion rate of one trillion seconds into years. Years ago, a Foggy Bottom politician, whom we have no memory who that may be, was famous for saying, “a billion here a billion there, now we are talking real money.” Replace “billions” with “trillions” – “We have a problem Houston.”

Thankfully there is not one (1) more year of Covid19, nor one thousand nine hundred (1900) months of Covid19, nor one trillion (1,000,000,000,000) seconds of Covid19 we are facing. Things are looking up.



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Presidents Message of these letters, please take the time to do so. Lester is to be highly commended for these writings. I have copied them to our newsletter herewith, so look at the "Inside This Issue" index on the front page to be taken to the respective pages.

Please plan to attend our virtual meeting this Thursday, the 18th. Our illustrious Vice President, Joe Munsey, RPL, has lined up a great speaker, Robert D. Coviello, Esq., who will talk about "Alternative Dispute Resolution, American Arbitration Association and Employment Litigation."

Until I see you in "Hollywood Squares," bye for now.

Luncheon Speaker number of overtime and exempt/non-exempt misclassification disputes.

Mr. Coviello has over 35 years of employment litigation experience. His civil litigation practice quickly evolved into specialized representation of individuals and management in employment-related matters. He has conducted several hundred depositions in employment cases and is personally responsible for the litigation of several hundred employment-related harassment/discrimination civil suits. He has extensive jury trial experience through verdict and appeal in matters involving harassment, discrimination, breach of contract, wage claims and other related employment torts and class action claims.



Randall Taylor, RPL
Petroleum Landman

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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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Southern California Gas Company
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Jason Downs, RPL
Chevron Pipeline & Power
858-699-3353

Nominations Chair
Dale Hoffman
907-830-2571

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 meeting on Wednesday, January 27, 2021 led by President, Randall Taylor. The topics discussed at the meeting were as follows:

- Jason Downs is in the final process of updating the Accounting status of the LAAPL.
- Jason Downs requested \$6000.00 for the Mickelson Golf Classic 2021 deposit. This amount will be reimbursed to LAAPL after the tournament.
- Per Allison Foster's request, the \$20.00 late fee for membership renewal has been waived for the 2020-2021 term due to Covid 19.
- Allison Foster advised that LAAPL branded glasses had been ordered for the purpose of membership promotions. Allison noted three people for membership approval.

Scheduled LAAPL Luncheon Topics and Dates

March 18, 2021

Robert D. Coviello, Esq.
Coviello Mediation Services and ADR Services, Inc.

“Alternative Dispute Resolution, American Arbitration Association and Employment Litigation”

May 20, 2021

Michael Sherman, Esq. of Mitchell Chadwick LLP
Officer Elections

September 16, 2021

TBD



Treasurer's Report

Jason Downs, RPL

Treasurer

Chevron Pipe Line and Power Company

As of 1/16/2021, the LAAPL account showed a balance of

Deposits	\$1,986.55
Total Checks, Withdrawals, Transfers	\$1,803.50
Balance as of <u>3/11/2021</u>	\$33,465.41

Early Bird Call for Dues

Jason Downs, RPL

Treasurer

Land Representative

Chevron Pipeline and Power Company

Jason Downs, RPL, Chapter Treasurer, will be calling for dues late Spring; which will be due by June 2021 for the 2021 – 2022 year. Cost: still a bargain at a mere \$40.00.

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

J.R. Billeaud, Berry Corporation

214.453.2927

jbilleaud@bry.com

Aaron Tanner, Berry Corporation

661.616.3846

atanner@bry.com

Sarah Taylor, Stoel Rives

916.319.4645

sarah.taylor@stoel.com

Transfers

None to Report

Corrections

None to Report

Lawyers' Joke of the Month

Jack Quirk, Esq.
Bright and Brown

If you ever testify in court, you might wish you could have been as sharp as this policeman. He was being cross-examined by a defense attorney during a felony trial. The lawyer was trying to undermine the police officer's credibility

Q: 'Officer --- did you see my client fleeing the scene?'

A: 'No sir. But I subsequently observed a person matching the description of the offender, running several blocks away.'

Q: 'Officer -- who provided this description?'

A: 'The officer who responded to the scene.'

Q: 'A fellow officer provided the description of this so-called offender. Do you trust your fellow officers?'

A: 'Yes, sir. With my life.'

Q: 'With your life? Let me ask you this then officer. Do you have a room where you change your clothes in preparation for your daily duties?'

A: 'Yes sir, we do!'

Q: 'And do you have a locker in the room?'

A: 'Yes sir, I do.'

Q: 'And do you have a lock on your locker?'

A: 'Yes sir.'

Q: 'Now why is it, officer, if you trust your fellow officers with your life, you find it necessary to lock your locker in a room you share with these same officers?'

A: 'You see, sir - we share the building with the court complex, and sometimes lawyers have been known to walk through that room.'



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Rick Peace, President

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AAPL Director Report

Director Report

AAPL QUARTERLY BOARD MEETING

March 14, 2021

Omni Hotel ~ Fort Worth, TX- Hybrid Event

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

47 **Total Local Association Members**

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

Association projects/activities:

The Mickelson Golf Classic 2021 is scheduled for Thursday, July 15th at Sand Canyon CC.

LAAPL holds out hope for a March in-person luncheon (3/18/21) at The Grand, Long Beach. Future LAAPL 2021 luncheon dates: 5/20/21, 9/16/21 & 11/18/21.

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

Association requests/concerns:

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

Local news including business activity and day rates:

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

Bylaws Policy and Procedure suggestions:

None

**JAMES C'KARO
ASSOCIATES
LAND SERVICES**

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303.279.0789

LAAPL Nominating Committee

Randall Taylor, RPL, Chapter President, appointed **Dale Hoffman, CPL**, Retired, Past President of LAAPL, as LAAPL's Nominations Committee Chair. Dale will be seeking out qualified candidates for officers. The officers will serve from July 1st, 2021 – June 30th, 2022. All qualified members interested in submitting their names as candidates are encouraged to contact the Committee Chair. Dale can be reached at 907-830-2571 or dale.e.hoffman@gmail.com.

Per Section 7 (7a) of the By-laws, the membership will be provided with a list of nominees for officers for Vice President, Secretary, Treasurer and two (2) Directors at the March meeting. Further nominations from the floor will also be accepted at the March meeting. Members whose names are placed in nomination must give prior consent to be nominated by mail or email up to May 1, 2021. The election will take place at the last regular meeting of the Association this fiscal year, which is scheduled for May 20, 2021.

Officers and Duties

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



PROUD SPONSOR OF THE LOS ANGELES ASSOCIATION OF PROFESSIONAL LANDMEN

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AAPL President, Lester Zitkus, CPL - Letter One

AAPL PRESIDENT, LESTER A. ZITKUS, CPL, DELIVERS LETTER TO THE U.S. DEPARTMENT OF THE INTERIOR IN RESPONSE TO THE ADMINISTRATION'S OIL AND GAS LEASING PAUSE

January 28, 2021

Hon. Scott de la Vega
Acting Secretary of the Interior
U.S. Department of the Interior 1849 C Street, NW
Washington, DC 20240

Dear Acting Secretary de la Vega:

On behalf of the nearly 13,000-member American Association of Professional Landmen (AAPL) and our 43 affiliated local associations across North America, we respectfully request that you immediately suspend or rescind Order No. 3395 to allow for energy permits and approvals on federal land – and to protect the American jobs and significant sums of revenues provided to states through this production. While our membership works in all mineral and energy related industries, including renewable energy industries, we find the actions taken by the administration in issuing Order No. 3395 and other recent related actions as a direct affront to our member's ability to practice their profession.

President Biden's Executive Order on Tackling the Climate Crisis at Home and Abroad, signed on January 27, 2021, prescribes that “[t]o the extent consistent with applicable law, the Secretary of the Interior shall pause new oil and natural gas leases on public lands or in offshore waters pending completion of a comprehensive review and reconsideration of Federal oil and gas permitting and leasing practices in light of the Secretary of the Interior's broad stewardship responsibilities over the public lands and in offshore waters, including potential climate and other impacts associated with oil and gas activities on public lands or in offshore waters.”

Pursuant to the Mineral Leasing Act (30 U.S.C. § 226) and the Federal Onshore Oil and Gas Leasing and Reform Act of 1987 (30 U.S.C. § 181), the Secretary of the Interior is provided broad discretion and may continue federal leasing and permitting programs even while conducting “a comprehensive review and reconsideration” and imposing an indeterminate pause may run afoul of both federal law and your authority as a yet unconfirmed acting officer of a federal agency pursuant to the Federal Vacancies Reform Act of 1998 (5 U.S.C. § 3345). According to a [2020 Congressional Research Service report](#), The Vacancies Act “generally provides the exclusive means by which a government employee may temporarily perform the nondelegable functions and duties of a vacant advice-and-consent position in an executive agency. Unless an acting officer is serving in compliance with the Vacancies Act, any attempt to perform the functions and duties of that office will have no force or effect.” This overreach may also violate the National Environmental Policy Act (42 U.S.C. § 55) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 35) in the administration of federal land management.

The results of imposing a unilateral and slapdash policy harms all Americans without due consideration for protecting our nation's wellbeing and domestic interests. As of 2020, oil and gas production on federal lands and waters accounted for nearly 20 percent of all energy produced in the United States and has finally made our nation energy independent and no longer reliant on our enemies abroad for energy security. Moreover, a recent [study by the Global Energy Institute](#) found that “if energy production were banned from federal lands and waters, through a ban on future federal-lands leasing and prohibiting the current production of these resources, the result would be an increase in energy prices for consumers due to the removal of low-cost resources from the available supply stream. The ban would lead to the loss of hundreds of thousands of American jobs and billions of dollars in revenues to the U.S. Treasury and to many western states.”

Ensuring we have a supply of affordable, reliable energy supports our country's economy and energy security, while also ensuring our air and water are the cleanest in a generation. Energy produced in the United States is the cleanest and safest in the world – and subject to stringent environmental standards. The potential effects of this order, as well as other actions taken recently by the administration, will result in increased imports of foreign produced oil, most all of which is produced from adversarial countries whose environmental standards and human rights records are deplorable in comparison to those of the United States. In short, these actions will most certainly have an inverse effect on the apparent efforts by the administration to protect and improve the environment while addressing security and human rights issues both here in the United States and abroad.

When we protect our ability to produce energy here, we are protecting our way of life and a great

*Zitkus Letter Onecon-
tinued on page 9*

*Zitkus Letter One
continued from page 8*

American industry. Our landman members operate on federal lands in Alaska, Arkansas, California, Colorado, Louisiana, Montana, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Wyoming, and West Virginia.

This is a critical time in our country as we are facing the worst economy in 60 years – plagued by over 10 million people unemployed and GDP growth, consumer confidence, and labor force participation all at lower levels now than what has been faced by most modern presidents. The indeterminate suspension of federal leasing and permits and approvals – if made permanent – is a direct attack on AAPL members, American oil and natural gas workers' jobs and livelihoods, states' ability to provide vital public services, and our country's ability to be independent from foreign energy sources.

Not only will the President's order have national implications, but it will cripple state economies, like in New Mexico, where oil and natural gas revenues account for about 40 percent of the state's general revenue fund. The revenue generated from oil and natural gas is critical in the funding of the state's educational system; so much so that Governor Michel Lujan Grisham (D-NM) has said that, "without the energy effort in this state, no one gets to make education the top priority." Governor Mark Gordon (R-WY) said, "The President's decision to halt Federal leasing on oil and gas under the guise of a 'pause' is beyond misguided." Gordon called it "disingenuous, disheartening and a crushing blow to the economies of many Western States, particularly Wyoming. No matter how it is framed, this action is still a ban on leasing." U.S. Senator Lisa Murkowski (R-AK) said, "My state of Alaska, it's our oil resources that have allowed us to build our schools and roads."

AAPL and its members appreciate your consideration and look forward to supporting this administration's Build Back Better agenda with Made in America oil and natural gas.

Respectfully,

Lester A. Zitkus, CPL

President, American Association of Professional Landmen



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AAPL President, Lester Zitkus, CPL - Letter Two

A MESSAGE FROM AAPL PRESIDENT, LESTER A. ZITKUS, CPL: TEXAS POWER OUTAGE

Dear fellow AAPL member,

As if we needed another test of our perseverance. Texans across most of the state had another “once in a lifetime” experience when frigid weather and snow blanketed the state for a four- or five-day period in mid-February. AAPL’s Governmental Affairs Manager Russell Cohen put together a white paper of facts and figures related to the circumstances surrounding the loss of power supply across the ERCOT managed power grid in Texas and what led to broad outages for many Texans. A link to the white paper is attached [here](#), and it is also posted on our AAPL website under [Advocacy and Legal](#).

Stating the obvious, Texans — and the nation — learned how fragile the Texas energy grid could be when faced with snow, freezing rain and extended subfreezing temperatures. It was a painful reminder of how incredibly valuable a dependable, reliable supply of natural gas is to the state and how critical it is to have an effectively designed infrastructure in place to deliver the natural gas needed to power generating plants, municipalities and residences.

As we have seen play out in the media and political arenas, there is no shortage of finger pointing, accusations of negligence and allegations of poor preparedness by multiple public and private agencies, source generation facilities, pipeline operators and power plant owners/operators. However, I do believe we can focus not only on the lessons learned but also point out some of the positives that should be highlighted from such a tragic series of events.

Undoubtedly, there were failings across the board, and those failings were not limited to just reliance — or overreliance as some have suggested — on renewable energy sources. There were plenty of challenges created by natural gas supply disruptions due to freeze-offs, low line pressure and compression facility failures, in addition to natural gas power plant failures. However, learning now that the entire Texas energy grid was within minutes of a total catastrophic failure were it not for the ability to keep natural-gas-powered generation moving across the grid at the most critical periods of time needs to serve as a sobering reminder to us all — including our elected state and federal officials, as well as environmentalists — that we must continue to develop a comprehensive strategy to meet our nation’s growing energy needs, which should include a continued emphasis on natural gas supply development and infrastructure.

One of the many important data points in the AAPL issued white paper is that during the worst periods of grid outages in Texas, power generation from some natural gas plants increased by a whopping 450%. To suggest we could meet current and future energy demand — especially during significant weather events as was the case in February — exclusively through renewable energy sources will only set us up for a repeat of the type of circumstances that Texas has had to deal with.

The backdrop to all of this is the fact that our profession, the land profession, has and will continue to play a critical role in helping not only Texas, but our nation, develop projects to serve our growing need for clean, affordable, reliable energy. The role of the land professional is often referred to as “the point of the spear” on getting projects started through preliminary title work and site assessments, and then propelling them forward through the negotiation and acquisition of the necessary rights for the location of facilities, routes of ingress and egress, surface use agreements for staging areas all the way through the actual construction and completion phases, including negotiating the necessary rights to transport the energy — regardless of source — to the interstate/intrastate or end-user markets. Other than land, few professions have the level of involvement working on projects to solve our energy needs across the spectrum of renewable and traditional sources of energy.

The employment opportunities for our profession are changing as the energy mix is changing. The skill sets that are so critical for success in the oil and gas industry are also critical to the needs of the renewable energy industry. The land profession is challenging and, in many ways, rewarding, both personally and financially, where one can leverage their skills in entrepreneurialism and problem solving. What could be a more gratifying, noble — and secure — cause than to serve as a professional in an ever-growing energy industry without being dependent on any one segment as many of us have been in the past.

We should do all we can to educate the public, career-minded college students and elected officials that our profession has the skills to support the development of a comprehensive energy portfolio to supply our nation with clean, reliable and affordable energy for years to come.

Respectfully,

Lester A. Zitkus, CPL
President, American Association of Professional Landmen

TELL THE STATUS QUO TO WATCH ITS BACK.



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

OUR SERVICES



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**Membership News
SPRING 2021**

WELCOME to new (or renewing*) Members, voted-in at our January 28th meeting:

J.R. Billeaud*, Berry Corporation
Aaron Tanner, Berry Corporation
Sarah Taylor, Stoel Rives



Elections for the upcoming year are held each May. Consider a **Board, Chair or Director** position with LAAPL for the July 2021-22 term, and help guide our organization post-pandemic. For information contact **Dale Hoffman, CPL**, Nominations Chair at dale.e.hoffman@gmail.com ph 907.830.2571



AAPL Annual Meeting will be held June 23-26 at *Live! by Loews* - Arlington, TX

Keynote Speakers: JIMMIE CHO
Chief Operating Officer
Southern California Gas Company; and
MONIKA U. EHRMAN
Visiting Professor of Law
University of North Texas at Dallas College of Law

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Dear friends,

Thank you for your support over these last couple of months. On behalf of our coalition and this industry, we're beyond thrilled that our County Board of Supervisors voted to approve the re-implementation of our County's world-class oil and gas permitting program!

"We commend the County Board of Supervisors for ensuring this gold standard of environmental protection remains in place." said Tracy Leach, Kern Citizens for Energy director. "Our local industry can continue obtaining the permits it needs to produce the oil that our entire state still relies on every single day. This is a huge win for the industry, the men and women who produce our much-needed energy, and for the future economic success of our entire community."

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Legislative Update

by Mike Flores
Championship Strategies, Inc

QUICK HITS



City Working to Appoint a New Petroleum Administrator: Received 138 applications, now reviewing 30. Wants to make hire soon, but may face further delay. County is also hiring a Petroleum Administrator, but the time is uncertain.

LA County Climate Action Plan: The County's goal for its unincorporated areas is carbon neutrality by 2045. The County is still working on comments provided in April, and a new draft for comment is expected in the near future. This will be key,

LA County Ordinance Revisions: The ordinance, which currently proposed setbacks from oil and gas wells of 600 feet for new wells and 300 feet for existing wells, is on hold until next year. Activists are pushing for 1,500 foot setbacks.

CONGRESSMAN WANTS TO BAN OFFSHORE OIL AND GAS LEASING

Central Coast Congressman Salud Carbajal is re-introducing legislation to protect federal land on the Central Coast, saying he's optimistic Congress will be more receptive because of a new Biden administration.

Carbajal represents the 24th congressional district covering San Luis Obispo and Santa Barbara counties, and parts of Ventura County. His bill would permanently ban future offshore oil and gas leasing off the California coast.

The congressman first introduced H.R. Bill 455, the California Clean Coast Act, in 2017 but it never passed.

He's reintroduced it every year since then and thinks this time, he has a better chance with a new congress.

Carbajal says he's also encouraged by President Joe Biden signing an executive order to temporarily halt oil and gas drilling on federal public lands and offshore waters.

GOLDMAN RAISES BRENT OUTLOOK TO \$75 IN Q2, \$80 IN Q3

Goldman Sachs lifted its Brent price outlook by \$5 per barrel in the second and third quarters after OPEC+ decided to keep its output cut deal largely in place. The bank forecast \$75 per barrel in Q2 and \$80 in Q3, adding that it was clear the global producers were "pursuing a tight oil market strategy" and that inventories could drop to their lowest point since 2014 by year-end.

The Petaluma City Council voted to outlaw new gas stations. The move mirrors recent actions like the City of San Luis Obispo, to ban natural gas hookups in new construction. According to Axios, expect more such ordinances to be promoted by grassroot groups across the state.

Kern County Set To Resume Issuing Permits

California's oil and natural gas hotspot, Kern County, is set to resume issuing permits to drill in April after adopting enhanced rules that could allow more wells to be permitted every year. The five-member Board of Supervisors unanimously adopted the ordinance, which includes restrictions that could increase the costs for oil and natural gas operators.

The rules, which would take effect around April 6, establish a generic environmental impact assessment and would require larger buffers between homes and wells along with muffled drilling noise.

Western States Petroleum Association President Catherine Reheis-Boyd said the new ordinance would require operators to pay more fees, but the funds would be reinvested in the surrounding communities.



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Case of the Month - Right of Way



*Edward V. A. Kussy, Esq., Partner
Law Firm of Nossaman LLP
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This is the third in a series of eAlerts on revisions to National Environmental Policy Act (NEPA) regulations [published](#) in the Federal Register on July 16, 2020 by the Council on Environmental Quality (CEQ) (“Final Rule”). The CEQ’s revised rules amend 40 CFR Parts 1500-1508. Nossaman attorneys Ed Kussy, Rob Thornton, Svend Brandt-Erichsen, Rebecca Hays Barho, Brooke Marcus Wahlberg, David Miller and Stephanie Clark are contributors for this series.

Previously, we provided eAlerts focused on changes the CEQ has made to the [definitions section](#) of the NEPA regulations and changes to the [beginning of the NEPA process](#) for preparation of an environmental impact statement (EIS). Today, we focus on changes the CEQ has made to clarify and enhance the use of categorical exclusions (CE) and environmental assessments (EA).

As we noted in our previous alert, the beginning of the NEPA process comes where there is a proposed “major federal action.” When NEPA applies, agencies must first determine what level of review is required. The agency has three options: a CE, an EA and a Finding of No Significant Impact (FONSI) or an EIS.

Agencies may designate CEs in their NEPA implementing procedures which identify categories of actions that they have determined ordinarily do not have a significant effect on the environment. If a CE is available, then NEPA review is complete unless an agency has specified that some level of documentation applies. Where a proposed action is not subject to a CE, and it is not clear from the outset that the action may cause a significant effect on the environment, then the agency may prepare an EA. The EA process results in one of three outcomes: (1) a FONSI, (2) a Mitigated FONSI, or (3) a decision to prepare an EIS. A FONSI applies where the action has no potentially significant effects. As is discussed in greater detail below, prior to the effective date of the Final Rule, a Mitigated FONSI was a tool based entirely upon guidance and was neither identified nor described by regulation.

Appropriate Level of NEPA Review: What Should We Do?

While the 1978 CEQ NEPA regulations described the three levels of potential review, they did not clearly set out the process for determining what level of review is appropriate for a given action. The Final Rule changes that by adding 40 C.F.R. § 1501.3. Section 1501.3 sets out the framework for determining the level of NEPA review by providing in a single location the thresholds for utilizing a CE, EA or EIS, with references to the regulations governing preparation of the relevant document.

A key determination for the appropriate level of review both prior to and under the Final Rule is whether the proposed project may have significant effects on the environment. Under the 1978 regulations, the determination of significance was based on “context” and “intensity.” The Final Rule changes this. It replaces the consideration of “context” with the “consider[ation], as appropriate to the specific action, [of] the affected area (national, regional, or local) and its resources.” This change is intended to clarify the meaning of the prior usage of “context” to specify that significance varies from project to project based on the setting of the proposed action. The Final Rule also replaces the consideration of “intensity” with consideration of the “degree” of the proposed action’s effects.

One potentially significant change to the Final Rule is the elimination of a proposed action’s potential “controversy” from the determination of the action’s significance. “Controversial” in this context previously referred to substantive differences with other agencies or substantive scientific controversy rather than the controversial nature of the project from the perspective of the public. In the Final Rule, CEQ specified that the change was made because the controversial nature of a proposed action bears no relationship to the actual significance of its environmental effects. While CEQ’s change may have some basis in fact, the potential for controversy has long guided agencies in their decision to prepare an EIS when the significance of a proposed actions effects is a close call. Because of the potential for litigation, it is possible that even under the Final Rule, risk averse agencies may continue to prepare an EIS if the project is controversial and likely to face litigation, even when the effects on the environment may not be significant.

Enhancement of Categorical Exclusions

Despite the attention paid in the Final Rule to the time required to comply with NEPA for major projects, the vast majority of agency actions comply with NEPA pursuant to CEs that have been promulgated under various agency-specific NEPA regulations. In fact, CEQ estimates that approximately 100,000 CEs are prepared

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annually. Given the prevalence of CEs in NEPA reviews, it is interesting that since the promulgation of the 1978 regulations, which did not address CEs in detail, CEQ has provided official guidance on the use of CEs only once.

Over the years, Congress expanded use and availability of CEs. For example, a provision of MAP-21 allowed one Department of Transportation (DOT) operating agency to use the CE of another operating agency for “multimodal” projects, which were defined in MAP-21. The Final Rule is another such step. The Final Rule would add a new section 1501.4(a), requiring agencies to identify CEs in their NEPA procedures. While this reiterates the 1978 regulations’ requirement that agencies establish CEs in their NEPA procedures, it is unclear if this is intended to modify prior CEQ guidance encouraging agencies to develop procedures to allow projects which, on their face, have no significant impacts to be treated with a CE, even if they were not identified specifically in an agency’s existing list of CEs.

The Final Rule also adds section 1501.4(b)(1), which provides that, when extraordinary circumstances are present, agencies may consider whether mitigating circumstances or other conditions are sufficient to avoid significant effects. The preamble to the Final Rule explains that this provision could be used, for example, where a project can be designed to avoid effects creating “extraordinary circumstances” to a degree sufficient to warrant use of a CE. Thus, the Final Rule clarifies that the “extraordinary circumstances” standard is not intended to preclude the application of a CE simply because extraordinary circumstances may be present. This is consistent with a series of court decisions that have upheld the idea of a “mitigated” CE or mitigated FONSI.

Finally, the Proposed Rule would add a new paragraph (f)(5) to 40 C.F.R. § 1507.3, allowing agencies to establish a process in their NEPA procedures to apply a CE listed in another agency’s NEPA procedures. This practice is already available for DOT agencies under the FAST Act. The Final Rule, however, did not adopt another provision in DOT’s CE procedures as suggested by CEQ a number of years ago and briefly touched upon above. Under this provision, where a specific action is not listed as a CE, but otherwise meets the definition of a CE, an agency may process its NEPA approval as a CE after providing information to the relevant official supporting its conclusion.

Streamlining Environmental Assessments

Though not used nearly as frequently as CEs, the next most common level of NEPA review is the EA. CEQ estimates that approximately 10,000 EAs are completed annually. As with much of the Final Rule,

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CEQ's revisions to the regulations attempt to consolidate the previously scattershot EA requirements in a single location—40 C.F.R. § 1501.5—to provide clearer guidance for agencies that prepare EAs.

For the first time, the Final Rules' new section 1501.5(a) states precisely when an agency is required to prepare an EA. It provides that “[a]n agency shall prepare an environmental assessment for a proposed action that is not likely to have significant effects or when the significance of the effects is unknown.” While this formulation did not exist in the original regulations, it does not represent a fundamental shift because it mirrors federal agencies' existing practices for EAs.

Importantly, the Final Rules establish a presumptive one-year time limit for completion of the EA process – measured from the date the agency decides to prepare an EA to the date of publication of an EA or FONSI in the Federal Register (§ 1501.10). Additionally, the Final Rule sets a presumptive 75-page limit on EAs, not including appendices (§ 1501.5). CEQ states that the purpose of these limits is to focus NEPA reviews on the relevant analyses and to generate concise, readable documents that will better serve their informational purpose. The efficacy of these presumptive limits will depend in part on the various agencies' buy-in to their mission. Under the Final Rules, senior agency officials are permitted to approve timelines and documents exceeding these presumptive limits, provided they specify the grounds for the requested exception and establish a new time and /or page limit. The Final Rules prescribe a set of factors a senior agency official may consider in determining whether to grant an extension or exceedance. It is understood that such exceedances likely would apply only for more complex or controversial projects.

The effectiveness of the Final Rule across federal agencies remains to be seen. The Final Rule does not specify what happens when an agency fails to abide by the presumptive time or page limits. With respect to the 75-page limitation, the Final Rules do not impose limits on the length of technical appendices, and the definition of “page” (500 words) excludes charts, graphs, pictures and the like. Thus, while the main document may be shorter, the Final Rules do not address the voluminous technical appendices that may accompany the EA. Thus, the practical impact of the proposed change might be simply to shift environmental analyses from the main body of an EA to its appendices. If this is the case, the result might be that the main body of the EA is just a summary of the technical appendices.

With respect to the time limitations on preparation and finalization of EAs and FONSI, the abstract nature of the trigger of the one-year clock (when the agency “decides” to prepare an EA) may mean that there is little change in practice. For environmental resource agencies processing applications for permits and other approvals, applicants may continue to see significant delays in the processing of permit applications as agencies negotiate details of the underlying project or request, particularly when the agency may be concerned about a potential lawsuit.

About Those Impacts: Use of Mitigated FONSI

Following preparation of the EA, if the agency concludes that there will be no significant impacts—and therefore that an EIS is not required—it will typically prepare a FONSI. That FONSI documents the agency's relevant analysis and explains the basis for the agency's conclusion that the proposed action will not result in significant environmental impacts. The Final Rule largely does not change this process, though it does focus again on consolidating the various requirements for FONSI in the new 40 C.F.R. § 1501.6.

One significant change, however, is the Final Rule's inclusion of a new paragraph (c) addressing the use of mitigated FONSI. Previous regulations did not officially recognize the availability or propriety of a mitigated FONSI, despite its widespread use and despite the fact that CEQ expressly approved their use in a 2011 guidance document. The Final Rule allows the use of mitigated FONSI and provides that a mitigated FONSI “shall state the authority for any mitigation that the agency has adopted and any applicable monitoring or enforcement provisions”



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*PCase - R o W
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for those mitigation measures. Further, the mitigated FONSI “shall state any enforceable mitigation requirements or commitments that will be undertaken to avoid significant impacts.” Thus, while the inclusion of mitigated FONSI in the Final Rule is significant, it does not represent a change in current NEPA practice.

Final Thoughts

The enhanced availability of CEs, as well as the clarification regarding use of mitigation to fit within a particular CE where extraordinary circumstances are present, could be one of the most significant new changes set forth in the Final Rules. Most projects proceed via CE, and expanding their availability may do more to expedite project reviews than many of the Final Rules’ other substantive changes. Use of CEs, however, is not without litigation risk. Further, the documentation associated with the use of CEs has become more and more cumbersome as agencies seek to document the decision making necessary for a CE to apply. The Final Rules do not establish any presumptive review or page limits for CEs. Thus, risk-averse agencies may still undertake extensive studies to justify their decisions to step beyond their own lists of CEs, which could undermine the effectiveness broadening the availability of CEs under the Final Rules.

Stay tuned for the next installment in this series, which will cover changes to the requirements for the contents of an EIS.

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Case of the Month - Oil & Gas

Ed Note: George Bibikos, Esq., has been a past author of articles published in *The Override*. George continues to practice as GA Bibikos, LLC, an oil and gas law practice, with his office in Harrisburg, PA. Below are various cases George highlighted in his recent blog site *At the Well Weekly*. We highly recommend receiving his updates since they include cases outside of the Appalachia oil patch where George concentrates his practice. Mr. Bibikos can be reached at gbibikos@gabibikos.com.


Below are cases which may be of interest for your further inquiry.

Headlines & Holdings – Appalachia

- ***Commonwealth Court Says no Fee Award Absent Bad Faith in EHB Appeal of DEP Permit Settlement.*** The Commonwealth Court of Pennsylvania upheld the EHB's use of the "bad faith" test for imposing attorneys' fees on permittees and affirmed its decision to deny the fee petition of the environmental group that settled its appeal with DEP. *Clean Air Council v. PADEP*, --- A.3d ---, No. 309 C.D. 2019, 2021 WL 560349 (Pa. Cmwlth. Feb. 16, 2021); *PADEP v. Gerhart*, --- A.3d ---, No. 107 C.D. 2020, 2021 WL 563313 (Pa. Cmwlth. Feb. 16, 2021).

Headlines & Holdings - Beyond Appalachia

- ***TX Appellate Court Says O+G Lease Partially Expired under Continuous Development Clause.*** A court of appeals in Texas concluded that a lease partially terminated except for 160 acres held by a reclassified well that allowed the lessor to claim interests in the remaining 480 acres, reasoning that the courts should be careful to find lease expiration under a continuous development clause unless they are certain it operates as a special limitation. *PPC Acquisition Co. LLC v. Delaware Basin Resources, LLC*, --- S.W.3d ---, No. 08-19-00143-CV, 2021 WL 651666 (Tex. App. Feb. 19, 2021).
- ***CO O+G Commission First Crack at Dispute.*** A federal court dismissed a case for lack of jurisdiction, holding that a Colorado statute expressly grants jurisdiction to the Colorado Oil and Gas Conservation Commission to determine "[t]he amount of the proceeds plus interest, if any, due a payee by a payer" from the sale of oil and gas from Colorado wells. *Boulter v. Noble Energy, Inc.*, --- F. Supp. 3d ---, No. 20-CV-861-WJM-KLM, 2021 WL 615413 (D. Colo. Feb. 17, 2021).
- ***Surface Owner in N.D. Owns the Pore Space.*** A federal court in North Dakota concluded that the surface owner, not the mineral owner, owns the pore space as part of the surface estate *Cont'l Res., Inc., v. Fisher*, --- F. Supp. 3d ---, No. 1:18-CV-181, 2021 WL 665102 (D.N.D. Feb. 19, 2021).
- ***Eighth Circuit Says No Royalties on Non-Producing Formation.*** The Eighth Circuit held a landowner is not entitled to royalties on alleged production from a watered-out formation without contradicting the lessee's evidence that formation hadn't produced gas since 1982. *Turner v. XTO Energy, Inc.*, --- F.3d ---, No. 19-2867, 2021 WL 726566 (8th Cir. Feb. 25, 2021).



The image shows a notary public card for Allison S. Foster RL. The card has a decorative blue and gold patterned border on the left side. At the top left is a gold square logo with a stylized 'F'. The text on the card reads: "ALLISON S. FOSTER RL NOTARY PUBLIC", "310.867.4076", "a.foster.land@gmail.com", "PO Box 64578 Los Angeles, CA 90064", "Land/Deed Specialist", and "Mobile Notary Services". At the bottom right, there are three circular logos: a red one with a triangle, a white one with "LAAPL" and "MEMBER", and a blue one with "AAPL" and "MEMBER".



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