



The Override

Every Landman Wants One!

Volume XIII, Issue IV

May, 2021



Presidents Message

Randall Taylor, RPL
President

Taylor Land Service, Inc.

Hello fellow LAAPL members. It is the month of May which means it is our last meeting for this season and term and time to elect officers for this next term.

I want you all to know it has been an honor to serve as President of this great association, and I want to thank every one of you who are members for being members. I specifically want to thank the other officers and chairs who have served with me and have been so much help to the organization and me. It takes sacrifice and determination to keep an organization alive and running well, especially in the trying times we have experienced for at least a year.

I have a dubious record; I have presided over all five meetings without seeing one member of the organization, ever. This situation saddens me, but at least we have been able to hold the meetings virtually and keep the organization going. I'm hoping this next season will bring about open meetings without masks and a chance for the excellent camaraderie we all crave so much.

There are a few things I pointed out in my last President's message which have happened this year which may continue to give us hope:

- The Kern County Board of Supervisors voted to approve the re-implementation of their County's world-class oil and gas permitting program.
- Because there have been over 1,500,000 approved signatures on the petition to oust the Governor, it looks like it will be on the ballot, and maybe we can elect a governor with more common sense and who will have a better outlook on the energy needs of the state.

*Presidents Message
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Meeting Luncheon Speaker



Michael Sherman, Esq. is of Counsel with Mitchell Chadwick LLP and advises clients on buying, selling, lease and permit mining,

wind, solar and oil and gas projects in California and the Pacific Northwest. Michael's work with mining companies extends throughout California with experience working on over 60 mine sites in 25 counties.

He also represents upstream oil and gas companies with operations in California in an industry heavily scrutinized by regulators and the public; such as advising clients when addressing land use, endangered species and regulatory issues. Mr. Sherman also regularly assists clients with oil and gas title issues, including resolving disputes with mineral and royalty owners and issuing drilling title opinions and division order title opinions.

*Luncheon Speaker
continued on page 2*



Opinionated Corner

Joe Munsey, RPL
Director

Publications/Newsletter Co-Chair
Southern California Gas Company

It has been over a year and we are still suffering hung-over headaches from the Chinese Communist Party's most effective export in its history - the bat-virus. If only two aspirins could resolve the problem, we would be home free.

However, while we can still hustle barrels of ink and commandeer the 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) Randall Taylor, RPL, Chapter President, iii) The legal community who have provided the content for our Cases/Issues of the Month, iv) Allison Foster, RL and Cliff Moore, Retired, for their tireless efforts to provide editorial oversight, and v) Star of this award-winning publication, Randall Taylor, RPL, of Taylor Land Services. Randall receives two accolades this year for double duty.

Now launching into my usual tirade on the important issues of the moment.

On your mark....get ready...set....go! They are off and running wildly towards the first turn with the goal of eliminating coal fired and natural gas generating electricity plants by 2035. With only 1,852 of these coal and natural gas-fired generating plants left in the U.S. of A., according to the US Energy Information Agency in January 2021, reaching the finish line will be a walk in the park.

Earth Day was recently celebrated and to reach those 2035 goals by next year when Earth Day rolls around, nearly 130 fossil fuel electricity generating plants will have had to close. That equals to 11 plant closings every month

if you are counting on your fingers.

If you want to keep your coal and natural gas-fired generating plant, you can keep your coal and natural gas-fire plant. Same rhetoric used for free health care insurance for all. There is always a glitch when it comes to the pricing mechanism.

Constructing a brand-new carbon sequestration and storage facility adjacent and abutting your fossil fuel generating plant runs into millions of dollars. Want a hydrogen generating feature to your carbon sequestration and storage facility? No problem, for hundreds of millions of dollars more, you tack the amount on the loan and the newfangled hydrogen producing feature also shows up at the doorstep of your fossil fuel electricity producing plant.

But the good news, carbon sequestration and storage facilities, plus the hydrogen generating feature, requires land work and all that comes with doing professional landman work. Everyone gets their fingers in the cookie jar; landmen professionals, attorneys of all rank and file, right of way professionals, real estate agents, seismic companies, surface owners, mineral owners, regulatory types, engineers of all shapes and colors. Lastly, but of greater importance, governmental agencies and Earth Day warriors for oversight, obstruction, and cost delays. Without this last group, something could actually get built and functionally operational, like turning on the switch sooner than later.

It is highly suggested you contact your local, state and federal elected officials and keep them honest. Assuring the public that eleven fossil fuel electricity generating plants are going down in flames [pun intended] per month. If not – getting around the first turn could be a problem and reaching the finish line in 2035 ain't gonna happen.



Call for Annual Dues

Allison Foster, RL

Membership Chair

LAAPL is now accepting **2021-2022** annual membership renewals ... still only **\$40.00** For **online payments**/receipts visit LAAPL.com:

<http://www.laapl.com/onlinepayments>

OR

Send check, payable to: "LAAPL," *Attn: Allison Foster, RL*

Dues must be paid by July 1, 2021 to appear in our 2021-2022 online Directory

All renewals received by June 1st will be entered in a random "early bird" drawing for one set of LAAPL glasses

President's Message
continued from page 1

- As I write this column, ANS West Coast crude is \$67.85, WTI Crude is \$65.37, Brent Crude is \$68.71, and Natural Gas is \$2.96

As I mentioned earlier, we will have our LAAPL officer elections at the beginning of the meeting at noon on Thursday. By the time you are reading this, I hope you are planning to attend this meeting. I would like to see a big turnout for the elections and our speaker presentation. This month our speaker is Michael Sherman of Mitchell Chadwick LLP. Many of you are acquainted with Michael, as he has spoken at our meeting, and several times at various West Coast Landman Institutes.

I look forward to seeing you all in our "Hollywood Squares" this Thursday.

Bye for now.

Luncheon Speaker
continued from page 1

Mr. Sherman completed his undergraduate studies at the University of Oregon; receiving his Bachelor of Arts in Economics, and receiving his Bachelor of Science in Political Science, magna cum laude.

He completed his graduate studies at the University of California, Hastings College of Law; receiving his Jurist Doctorate, cum laude.

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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Nominations Chair
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 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 required number of board members was not met on March 18, 2021 for a virtual Board meeting to take place. However, the Board members have been busy with their duties behind the scenes during this interesting year

New Members and Transfers

Allison Foster
Membership Chair
Independent

Welcome! As a Los Angeles Association of Professional Landmen member, you serve to further the education and broaden the scope of the petroleum landman and to promote effective communication between its members, government, community and industry on energy-related issues.

New Members
 None to Report

Treasurer's Report



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

As of 3/11/2021, the
 LAAPL account \$33,465.41
 showed a balance of
 Deposits \$1,415.82
 Total Checks,
 Withdrawals, Transfers **-\$1,068.04**
Balance as of 5/4/2021 \$33,813.19

Scheduled LAAPL Luncheon Topics and Dates

May 20, 2021

Michael Sherman, Esq. of
 Mitchell Chadwick LLP
 Officer Elections at Noon

September 16, 2021

TBD
 In-person Meeting - TBD

Happy 202nd Birthday, Colonel Drake!

At the Core

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

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

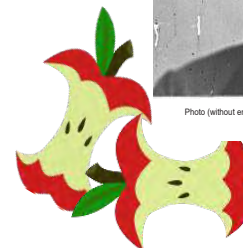
Each day after meals, over shoulder they'd fling,
 The old apple core, and then early next spring,
 When the snow melted and robins would sing,
 New trees would sprout 'round the well in a ring.

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

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



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



Lawyers' Joke of the Month

Jack Quirk, Esq.
Bright and Brown

It was later reported that his wife got out safely, and that he did indeed par the hole....he says the divorce isn't going to be that bad, now that there's no house involved!



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Rick Peace, President

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CALIFORNIA | OREGON | WASHINGTON

Election Ballot



2021-2022

OFFICERS and DIRECTORS

“Virtual” Meeting Date: May 20, 2021, 12:00 pm

Nominations Chairman Dale Hoffman, CPL, presents the following candidates¹ for officers to serve from July 1st, 2021 - June 30th, 2022. **Additional nominees may be submitted to the Nominations Chairman at dale.e.hoffman@gmail.com by calling 907-830-2571 to be included on the final candidate’s list until May 14, 2021, which will be published in the May newsletter.** Officers will be elected by a vote of membership in “virtual” attendance on May 20, 2021. Nominations will also be accepted from the floor at the “virtual” May 20, 2021, regular meeting.

PRESIDENT²

Joseph D. Munsey, RPL Senior Land Advisor
Southern California Gas Company

PAST PRESIDENT^{3 & 4}

Randall S. Taylor, RPL President
Taylor Land Service, Inc.

CANDIDATES:

VICE PRESIDENT – VOTE FOR ONE

- Richard Maldonado Vice President
Spectrum Land Service
- _____

SECRETARY - VOTE FOR ONE

- Marcia Carlisle Land Analyst
The Termo Company
- _____

TREASURER - VOTE FOR ONE

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

DIRECTORS - VOTE FOR TWO

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

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

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

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

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

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

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



The 2021 LAAPL Mickelson Golf Classic



LAAPL
LOS ANGELES ASSOCIATION
OF PROFESSIONAL LANDMEN



Thursday, July 15th, 2021

Tee Time 10:15am

****Sand Canyon Country Club****

Located in Santa Clarita California

Directions:

Go to www.sandcanyoncc.com
27734 Sand Canyon Road
Santa Clarita, California 91387
(661) 252-8484

LAAPL cordially invites you to participate in the 2021 LAAPL Mickelson Golf Classic fundraiser to be held at Sand Canyon Country Club in Santa Clarita California. We look forward to your participation. This tournament honors the late William A. Mickelson, a respected leader in LAAPL/BAPL, the California Oil & Gas Industry and truly a prowess on the golf course.

This year's fundraiser beneficiary is the R. M. Pyles Boys Camp (www.pylescamp.com). Join us for a day of fun and the opportunity to make positive changes in the lives of area youth. LAAPL will donate the net proceeds realized from the tournament to the R.M. Pyles Boys Camp, thus we encourage you to "sponsor" generously. **Please email your completed sponsorship forms and logos as soon as possible. Due to COVID, NO check in, Cocktail hour, buffet dinner, raffle or awards ceremony this year.** Box Lunch provided for all players.

2021 MICKELSON GOLF CLASSIC REGISTRATION FORM

____ GOLF ONLY, "Bogey Special"**\$200.00**
 (Includes golf only for ONE player)

____ "HOLE IN ONE": Full page ad – plus presenting sponsor status in all tournaments
 materials and program sponsorship**\$1000.00**
 (Includes golf for FOUR players)

____ "EAGLE": Full page ad - in tournament & program**\$500.00**
 (Includes golf for TWO players)

____ "BIRDIE": Half page ad - golf tournament program**\$250.00**
 (Includes golf for ONE player)

____ "CLUBHEAD SPECIAL":**\$150.00**
 (Includes your name listed in tournament materials and golf tournament program, No Golf)

Team Captain & Company Sponsor

Phone

Address City State Zip

Player Name: _____ *Email* _____

Player Name: _____ *Email* _____

Player Name: _____ *Email* _____

Player Name: _____ *Email* _____

Please pay online at LAAPL.com <http://www.laapl.com/onlinepayments> and e-mail sign up forms and camera ready artwork to jasondowns@Chevron.com Contact me by email for additional payment options.

Total paid at LAAPL.COM \$ _____

Comments/Special Requests:

Tournament format will be a 4-man scramble. Prizes will be awarded for 1st place, longest drive, and closest to the pin if allowed by the golf club. **Club Rules:** No coolers on the course, no golf carts driven on vehicle parking lot, shirts with collars only (no t-shirts, sweats, tank tops, denim, short shorts or cut-offs).

Education Corner

Sarah Downs, RPL
Southern California Gas Company
Education Chair

<p><u>May 2021</u> LAAPL Luncheon - 12:00 Noon Date: May 20th 2021 Location: Virtual</p> <p>Speaker: Michael Sherman of Mitchell Chadwick LLP</p>	<p><u>June 2021</u> 2021 AAPL Annual Meeting The 67th Annual Meeting & Conference Date: June 23rd- 26th Location: Arlington, TX Credits 16.00 CEU</p> <p>Keynote Speakers: Jimmie Cho, COO, Southern California Gas Company & Monika U. Ehrman, Visiting Professor of Law, University of North Texas at Dallas College of Law.</p>
<p><u>July 2021</u> Surface Use and Access Seminar Date: July 8th 2021 Location: Coraopolis, PA Credits: 5.00 CEU; 1.00 CEU Ethics</p> <p>AAPL RPL/CPL Certification Exam Review Date: July 13th – July 16th 2021 Location Tulsa, OK Credits; 18.00 CEU; 1.0 CEU Ethics</p>	<p><u>September 2021</u> Joint Operating Agreements Seminar Date: September 9th 2021 Location: Oklahoma City, OK Credits: 7.00 CEU</p> <p>Working Interest and Net Revenue Interest Seminar Date: September 16th 2021 Location: TBD Credits: 6.00 CEU</p>

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Gary L. Plotner, President
glp@mavpetinc.com

BAPL President – 1985-86 and 2003-04; AAPL Director – 1988-90, 2002-03, 2004-07

AAPL Director's Report

AAPL QUARTERLY BOARD MEETING

June 23, 2021

Live! By Loews ~ Arlington, TX

Name:	Jason Downs, RPL
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:

- LAAPL will host a virtual luncheon on 5/20/21. Our speaker will be Michael Sherman of Mitchell Chadwick LLP
- The Mickelson Golf Classic 2021 is scheduled for Thursday, July 15th at Sand Canyon CC
- LAAPL holds out hope for a September in-person luncheon (9/16/21) at The Grand, Long Beach. Future LAAPL 2021 luncheon dates: 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.

California Independent Petroleum Association (CIPA) recently blogged an Energy in Depth article regarding the concerns over Governor Newsom’s ban on oil & gas will only increase dependence on foreign oil.

[Energy in Depth](#) last week wrote how a domestic energy shutdown will “do little to reduce California’s energy usage, but will exacerbate the regulatory burden that is already making California dependent on foreign oil.”

The blog points out how foreign energy imports result in higher emissions which negates the claim that Newsom’s actions will benefit the climate.

Energy in Depth also quoted CIPA CEO Rock Zierman’s testimony before Congress earlier this month to highlight how ending domestic production does not mean California will stop needing petroleum and petroleum production:

“As a result of this situation, every barrel of oil we do not produce in-state must be tankered into our ports from foreign countries. **Make no mistake, this hurts the environment, hurts American workers, hurts local government services, and funds undemocratic regimes that do not share our humanitarian values.**”

Local news including business activity and day rates:

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

Bylaws Policy and Procedure suggestions:

None

Legislative Update

by Mike Flores
Championship Strategies, Inc



SB 467 Dies in Committee

California drilling ban proposal rejected in State Senate committee. Another attempt in California to ban the use of hydraulic fracturing (fracking) and other well stimulation technologies has failed to get a key legislative committee's endorsement, drawing cautious optimism from industry representatives. Senate Bill 467 by state Sen. Scott Wiener was granted reconsideration to possibly be reintroduced. The bill also would have prohibited wells from operating within 2,500 feet of homes, schools, healthcare facilities and other populated areas. (from NGI)

Newsom Seeks to Ban New Fracking Permits By 2024

Gov. Gavin Newsom said he will stop all new permits for hydraulic fracturing in California beginning in 2024, and told regulators to develop a plan to end all oil production by 2045. While fracking makes up only a small portion of the state's oil and gas output, Newsom's decision will still make it the largest crude producing state to ban the process.

WSPA's Response:

April 23, 2021

A statement from Catherine Reheis-Boyd, President & CEO of Western States Petroleum Association:

"Once again, Governor Newsom has chosen to ignore science, data and facts to govern by bans, mandates and personal fiat. Banning nearly 20% of the energy production in our state will only hurt workers, families and communities in California and turns our energy independence over to foreign suppliers.

"Through all means possible, we will join with workers, community leaders and others who wish to protect access to safe, affordable and reliable energy to fight this harmful and unlawful mandate. We will be a key part of an equitable energy future for California."

An Example of How to Protect Oil And Gas

The Texas legislature advanced a pair of bills aimed at protecting the oil and gas industry from moves to cut greenhouse gas emissions. The House approved a measure requiring state entities to divest from companies that cut ties or boycott fossil

*Legislative Update
continued on page 11*

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Legislative Update
continued from page 10

fuel companies. The Senate passed and sent to the governor a bill preventing municipalities from banning natural gas in new construction.

Off Shore Bill Introduced

Rep. Mike Levin has introduced a bill to ban new leasing for the exploration, development, or production of oil and natural gas along the Southern California coast. The American Coasts and Oceans Protection Act would protect the coastline from San Diego to the northern border of San Luis Obispo County.

Coastal Energy Alliance Creates Rapid Response Messaging Platform

“Sign up to join our rapid response team to push out messaging and respond to issues on Twitter and other social media platforms. We will provide trainings in the future for those that would like to learn more.”

<https://www.coastalenergyalliance.org/social-media-rapid-response-team>

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18% of Electric Vehicle Owners Return to Gas

Close to a fifth of all EV drivers in California have switched back to gasoline cars because charging their electric cars was a hassle, according to a new study bound to send ripples across an industry that has plans for market domination. The study from the University of California, published in Nature Energy, looked at drivers who bought EVs between 2012 and 2018 and found that 18 percent of battery electric vehicle buyers switched back to gasoline-powered cars, as did 20 percent of plug-in hybrid buyers. The main problem cited by respondents to the surveys that the authors conducted was with charging times.

California Fracking Ban Boosts Dependence of Imported Oil

California fracking ban a bigger boon to crude imports than bust for production. S&P Global. California's move to stop hydraulic fracturing permits by 2024 will likely do little to speed up the current decline in output, but any crackdown on production would boost the state's dependence on imported crude. California was once the third-largest oil producer in the US behind Texas and Alaska, according to US Energy Information Administration data. In the early 1980s, crude output in the Golden State reached 1 million b/d, behind Texas' 2.5 million b/d and Alaska's 1.7 million b/d. (from *Oil Price.com*)



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Tim Truwe, President

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The success of Petru Corporation was featured in an episode of the *Enterprises* television show, hosted by Terry Bradshaw and Kevin Harrington, which aired on FOX Business Network. Petru is also featured in "Black Gold in California, the Story of the California Petroleum Industry", Corporate America's Business Elite, CV Magazine, ACQ5 Global Awards and Lawyers Monthly (Expert Witness Award).

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Bibikos' At the Well Weekly Round-up

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Ed Note: It is "official." *The Override* has secured re-publication rights from George Bibikos, Esq. to republish information from Mr. Bibikos' blog site *At the Well Weekly*. Readers may recall George 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, or follow his blog @ gabibikos.com.

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

Headlines & Holdings – Appalachia	
<p>Second Circuit Kills NYC Climate Change Case. The Second Circuit rejected NYC's attempt to use state tort law to hold energy companies liable for damages allegedly caused by greenhouse gas emissions, stating that global warming presents a uniquely international problem of national concern governed by a "complex web" of federal and international laws and regulations and reasoning that "[t]he City of New York has sidestepped those procedures and instead instituted a state-law tort suit against five oil companies to recover damages caused by those companies' admittedly legal commercial conduct in producing and selling fossil fuels around the world." <i>City of New York v. Chevron Corp.</i>, --- F.3d ---, No. 18-2188, 2021 WL 1216541 (2d Cir. Apr. 1, 2021).</p>	<p>CHK Settles OAG Challenges to O+G Leasing and Royalties. Chesapeake settled the OAG's challenges to the company's leasing and royalty practices for a \$5.3M price tag and other concessions while the appeal against co-Defendant Anadarko involving the OAG's claims under the state consumer protection statute remains pending before the Pennsylvania Supreme Court.</p>
<p>Ohio Federal Court Upholds Prior Decision on O+G Royalties and PPC. A federal judge in Ohio doubled down on a prior decision that dismissed a challenge to deductions for post-production costs from royalties payable on the "wellhead price," holding again that the "at-the-well" rule of interpretation applies such that the lessor is responsible for a proportionate share of post-production costs even if there is no market at the wellhead and the lessee uses the net-back analysis to arrive at a wellhead price on which to pay royalties. <i>Eaton v. Ascent Resources</i>, --- F. Supp. 3d ---, No. 2:19-CV-3412, 2021 WL 858517 (S.D. Ohio Mar. 8, 2021).</p>	
Headlines & Holdings - Beyond Appalachia	
<p>TX Supreme Court Reconciles Competing Royalty Clauses in O+G Lease. The Supreme Court of Texas held that a lease provision requiring the lessee to "compute and pay royalties on the gross value received" trumped another provision requiring royalties to be "computed at the mouth of the well" and therefore rejected the lessee's deductions for post-production costs while remanding for more information about whether the lessee's use of gas off the lease for running equipment is subject to the royalty burden. <i>BlueStone Natural Resources II v. Randle</i>, --- S.W.3d ---, No. 19-0459, 2021 WL 936175 (Tex. Mar. 12, 2021).</p>	<p>TX Appellate Court Says "Subject To" Clause is not a Reservation. A court of appeals in Texas concluded that a deed conveying an entire estate "subject to" oil, gas, minerals, and other encumbrances of record did not reserve the oil, gas, and other minerals, holding instead that the "subject to" clause does not constitute clear language of reservation nor does it identify, with reasonable certainty, property excepted from the larger conveyance. <i>Ross v. Flower</i>, No. 03-19-00516-CV, 2021 WL 904864 (Tex. App. Mar. 10, 2021).</p>
<p>Federal Court in Ark. Asks State Supreme Court for Guidance on Statute of Limitations for O+G Royalty Claim. A federal court in Arkansas addressed whether the state's statute of limitations precludes a claim for underpaid royalties if filed after the limitations period or if the limitations period restarts every month as a new claim for underpaid royalties, but the court passed on resolving the question and instead certified the</p>	<p>TX Supreme Court Rejects Bid to Bust Lease for Lack of Continuous Development. The Supreme Court of Texas rejected claims by a lessor that a continuous development provision operated as a special limitation that terminated the lease as to non-producing tracts when the lessee failed to timely spud-in new wells, holding instead that the lease defined "drilling operations" as activities other than spudding-in a well</p>



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Bibikos' At the Well Weekly Round-up - continued

<p>question to the Arkansas Supreme Court for resolution. <i>Pennington v. BHP Billiton Petroleum (Fayetteville) LLC</i>, --- F. Supp. 3d ---, No. 4:20-CV-00178-LPR, 2021 WL 1230455 (E.D. Ark. Mar. 31, 2021).</p>	<p>and those are sufficient to maintain the lease as to non-producing tracts. <i>Sundown Energy v. HJSA No. 3</i>, --- S.W.3d ---, No. 19-1054, 2021 WL 1323406 (Tex. Apr. 9, 2021)</p>
<p>Alaska Supreme Court Says Owner of ORRI has Standing to Challenge Unit Order. The Supreme Court of Alaska held that an owner of an overriding royalty interest in a lease with the state has a financial stake in the state agency's decision on an application to expand a unit that originally included the lease burdened by the ORRI and, therefore, its owner had standing to challenge the order that omitted the lease/ORRI from the final application. <i>PLC, LLC v. STATE OF ALASKA, DEPARTMENT OF NATURAL RESOURCES</i>, --- P.3d ---, No. S-17500, 2021 WL 1325534 (Alaska Apr. 9, 2021).</p>	<p>Arbitration Clause in O+G Asset Purchase Agreement Applies to Resolve Claims Involving Non-Signatory Third Parties. The Texas Supreme Court held that claims for indemnity and attorneys' fees involving third-party non-signatories to an agreement did not fall within an exception to the arbitration clause and that non-signatory assignees are bound by the agreement to arbitrate under a theory of assumption. <i>Wagner v. Apache Corp.</i>, --- S.W.3d ---, No. 19-0243, 2021 WL 1323413 (Tex. Apr. 9, 2021).</p>



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Case of the Month - Right of Way



ANOTHER APPRAISAL OPINION BITES THE DUST

Bradford Kuhn, Esq., Partner

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In California eminent domain cases, appraisers typically have relatively wide latitude in determining fair market value for the property to be acquired. However, there are certain rules they must follow, and when an appraiser violates those rules, the appraiser's opinion may be completely stricken, leaving a property owner or a public agency with no valuation evidence. This is precisely what happened in a new unpublished California Court of Appeal decision, [*Solano Transportation Authority v. Anderson* \(2021 Cal.App. Unpub. LEXIS 2129\)](#), where the property owners' appraiser relied on inadmissible evidence and attempted to introduce new valuation opinions after the expert exchange.

Background

In *Solano Transportation Authority v. Anderson*, the Authority filed an eminent domain action to acquire a narrow strip of land bisecting the owners' 568-acre property in order to construct a water conveyance system. The owners claimed they had plans to develop the property as a mitigation bank which would generate income through the sales of environmental credits, and the Authority's project conflicted with their plans.

As the matter approached trial, the parties exchanged expert valuation opinions. The owners' appraiser determined just compensation was in the amount of \$5.1 million (which was later updated to \$3 million). The Authority's appraiser determined just compensation was just \$8,100.

The Authority filed motions in *limine* to exclude the owners' appraiser for relying on (i) comparable sales that were acquired by public agencies, (ii) un-comparable sales data, (iii) the "developer's approach" to value, and (iv) new opinions that were not part of the expert exchange. The



court granted the motions, but reserved details depending on how evidence played out at trial. After trial commenced and additional motions were granted excluding the owners' appraiser's opinions, the parties ultimately stipulated to judgment at \$8,100 (the Authority's appraised value) so the owners could file an appeal.

Testimony. Specifically:

- o Motion Re: Comparable Sales by Public Agencies: the owners' appraiser relied on comparable sales that were purchases by the Department of Water Resources (DWR) for mitigation purposes. The court determined such transactions were inadmissible under Evidence Code section 822, subd. (a)(1), which prohibits use of sales if the acquisition was for a public use for which the property could have been taken by eminent domain. The owners contended the acquisitions were voluntary transactions for mitigation purposes, and were not done under threat of eminent domain. Nevertheless, they were inadmissible because DWR could have used eminent domain to acquire the properties.
- o Motion Re: Contract for Sale of "Turnkey" Mitigation Site: the owners' appraiser relied on a comparable sale of a "turnkey" mitigation site that was fully entitled, approved, and permitted for mitigation banking purposes. The court determined that property was not comparable to the owners' property, as the subject

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property was undeveloped and unpermitted, and therefore the sale was properly excluded.

- o Motion Re: Developer's Approach Opinions: the owners' appraiser attempted to value the subject property by determining the mitigation credits available, the retail price of those mitigation credits, and the likely income the property could generate through those credits, and then subtracted out the costs to achieve such credits based on a specific plan of development. The court excluded this valuation methodology as improper. Specifically, the developer's approach or economic analysis approach involves valuing property based on a finished product (such as a housing tract), and subtracting out the costs to construct and entitle the property to arrive at a value. This approach, while regularly used by property developers, is inadmissible under California law as too speculative.
- o Motion Re: Undisclosed Expert Opinions: after the expert exchange, the owners' appraiser identified new damages opinions based on the taking of water rights. The court excluded such opinions, as both parties were required to exchange their expert witnesses and valuation data as of the expert exchange date. Absent special circumstances, if information was not included in the statement of valuation data, it cannot be presented at trial under Code of Civil Procedure section 1258.280.

Conclusion

Property owners and public agencies regularly have varying opinions on the just compensation to be paid for the taking of property for a public project -- particularly when it comes to severance damages. While appraisers have flexibility and latitude in the methods used to determine just compensation, eminent domain has special rules that exclude certain types of comparable sales data, certain valuation approaches, and data and information that is not timely or properly exchanged. The Solano Transportation Authority case serves as a good reminder for property owners, public agencies, appraisers, and eminent domain attorneys on the importance of relying on admissible valuation evidence and complying with expert exchange requirements.

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Case of the Month - Oil & Gas

CLASS DISMISSED: OHIO COURT STRIKES CLASS ACTION ALLEGATIONS IN A QUIET TITLE DISPUTE

By Travis L. Brannon, Esq., Associate & Ryan W. Steyer, Esq., Associate, Law Firm of K & L Gates

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As drilling activity and production in the Appalachian region stabilized (and even began to move upward) at the end of 2020, class actions continue to be used in creative ways by plaintiffs raising a variety of claims and forms of relief. Recently, however, an Ohio appellate court affirmed dismissal of class action allegations in a quiet title dispute, finding that a class action is an improper means to determine which class members actually own a property interest and the extent of each purported interest.

In *Baker v. Gulfport Energy*,¹ the original owners severed their property by selling the surface estate but reserved a three-fourths interest in the mineral estate.² In 2013, the property was leased to an oil and gas developer, and wells entered production two years later.³ A collection of heirs to the severed mineral estate were not included on the lease and were not paid any royalties.⁴ In 2018, those heirs filed a class action complaint, seeking to quiet title and other damages.⁵ The defendant filed a motion to strike class allegations as inappropriate to resolve a “typical land dispute.”⁶ The plaintiffs responded that class certification was necessary because there were over 100 possible heirs, many of which would be unable to bring claims individually.⁷ However, much of the class purportedly owned only fractional interests that differed from heir to heir.⁸ Thus, the trial court held that class certification was inappropriate in this context, citing the plaintiffs’ failure to include “[a]ll parties with any claims to the property, or material interests that might be affected, [who] are considered necessary and indispensable to an action to quiet title.”⁹

On appeal, plaintiffs argued that class certification was appropriate under Ohio Rule 23(B)(2) and 23(B)(3).¹⁰ The Ohio Seventh District Court of Appeals disagreed, noting that Rule 23(A) lists certain preconditions that must be met before a trial court can certify a class under the Rule 23(B) provisions.¹¹ In particular, Rule 23(A)(1) requires that joinder of all class members is “impracticable.”¹² However, in this case, joinder was “necessary” to resolve plaintiffs’ quiet title action.¹³ Thus, plaintiffs could not satisfy all the Rule 23(A) preconditions, rendering the Rule 23(B) analysis unnecessary.¹⁴

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Case - O & G

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Critically, the court also distinguished prior cases certifying a class to quiet title after a lease had expired.¹⁵ The court observed that in the prior cases, all class members were discernable via the leases they entered into, and the court was merely tasked with interpreting the lease.¹⁶ However, the proposed class in *Baker* would have tasked the court with “determining who owns an interest and what portion of the whole interest each person owns among more than one hundred heirs,” and a “class action is not the proper vehicle to determine the rights of [such] parties.”¹⁷ Accordingly, the court of appeals affirmed the trial court’s opinion and struck the class allegations.¹⁸

Given the likelihood of title issues and a multitude of heirs to mineral interests in the Appalachian basin, oil and gas companies faced with class action exposure should be diligent in evaluating the claims and available defenses. In light of *Baker*, the defense of lack of indispensable parties within the purported class could prove persuasive in Ohio and surrounding jurisdictions.

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NOTES

[1] *Baker v. Gulfport Energy Corp.*, 2020-Ohio-4825, 2020 WL 5949820 (Ohio Ct. App. Sept. 28, 2020).

[2] *Id.* at ¶ 2.

[3] *Id.* at ¶ 3.

[4] *Id.*

[5] *Id.* at ¶ 4.

[6] *Id.* at ¶ 10.

[7] *Id.*

[8] *Id.*

[9] *Id.* at ¶ 19.

[10] *Id.* at ¶ 14.

[11] *Id.* at ¶ 15.

[12] *Id.* at ¶ 16.

[13] *Id.* at ¶ 21. The court held that “the proposed class excludes parties necessary to the full determination of the ownership claims,” namely, any heirs who had entered into a lease with the defendant and potentially any individuals who opt out pursuant to class action rules. *Id.*

[14] *Id.* at ¶ 23. The court also refused class certification on the remaining damages claims because “the quiet title issues must be resolved before the remaining claims can be analyzed.” *Id.* at ¶ 20.

[15] *Id.* at ¶¶ 22–23.

[16] *Id.* at ¶ 23.

[17] *Id.*

[18] *Id.* at ¶ 24.



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