Award Winning

# The Override

*Every Landman Wants One!*

Volume XV, Issue II | November, 2022

LAAPL
LOS ANGELES ASSOCIATION OF PROFESSIONAL LANDMEN

## Presidents Message

**Richard Maldonado**
**President**
**Spectrum Land Services**

As we all know by now, this past September, Governor Gavin Newsom signed Senate Bill SB1137, increasing the minimum distance of new oil and gas wells to 3,200 feet in community areas. It also prevents necessary retrofitting of existing wells within the new setback area.

Just days following the stroke of Newsom's pen, the California Independent Petroleum Association (CIPA) sprang into action by launching a massive signature-gathering effort to compel California voters to reconsider this absurd law.

The magic number of signatures required is 623,212, with a deadline of Dec. 15, 2022 in order to qualify for the 2024 general election ballot. If successful, SB1137 will be put on hold until that next election instead of going into effect this coming January.

According to Ballotpedia, signature-gatherers have appeared all over California, from grocery stores to gas stations and city halls to amusement parks. By all accounts, the signature effort will continue full steam ahead until the goal is reached.

CIPA issued a recent press release confirming that SB1137 was "initiated without any scientific basis" and decreasing the in-state energy supply will result in higher gas prices and force California to be more reliant on imported foreign oil.

My hope, as well as anyone else who cares about a reasonable balance between our vital fossil fuel needs and our current path toward renewable energy, is for the California voters to see that SB1137 is a losing proposition for everyone.

## Inside This Issue:

~ Click on a topic to take you to that article ~



## Meeting Luncheon Speaker

**Oscar Contreras**, Project Manager in Southern California Gas Company's Business Development, will present Southern California Gas Company's use of hydrogen as part of its sustainable energy portfolio.

Southern California Gas Company has been known for many years as "the Gas Company." The Gas Company was recently honored with the top "Business Transformation Award" at the 2022 Responsible Business Awards, hosted by Rueter Events. Among a field of major global companies, the Gas Company was identified as a leader in sustainable business priorities.

Oscar has been with the Gas Company nearly eight years. He is Project Manager with the Clean Energy Innovation and is currently overseeing the "[H2] Innovation Experience" Project.

## Opinionated Corner

**Cliff Moore**
**Independent, Retired**
**Past Chapter Secretary**

The go-to solve for many inexperienced or even chiseled veteran problem solvers has been to throw money at it. It'll either drown in the onslaught or get fixed by sheer dumb luck. Super glue was founded that way and so was Viagra. Although they are by-products of experimentation using petroleum-based chemicals and went two entirely different routes to achieve massive popularity and success, both crossed their Rubicon by having a ton of money thrown at the projects.

Wind and solar projects are going the drown-it-in-money direction trying to fix a basic problem called weather. We live on a life-giving rock hurtling through space. This rock is affected, nay bombarded, by several controllable and uncontrollable universal themes. One being the weather is going to change and has changed for at least a billion years. The other being our sun shooting flares at us, other debris coming at us and by us constantly as long as this universe is expanding.

Stars that have collapsed and broken apart eons ago send their shards across the expanse of space and eventually they are going to meet us and we them. But I digress.

With the return on investment from funding solar and wind projects (EROEI – Energy Returned on Energy Invested) any financial advisor worth his or her weight in Bitcoin will tell you to get out now before the impending collapse. But Europe and others aren't listening, i.e., they're throwing more money at it. They are hellbent and devil committed to see this to the bitter end.

However, the other side of the issue is respected financial wizards also predicted ten years ago Bitcoin would collapse on itself in three years. Crypto currencies are alive and well in the digital economic world with the promise of major returns if you hunt and peck and mine wisely.

Virginia, North Carolina, etc. are throwing money at Dominion Energy's Offshore Wind Project. An unproven potential theoretical nightmare of a project purported to show a respectable return on investment. The return is speculative at best. What NC and VA have done is tried to protect the taxpayer/consumer in case this boondoggle fails. They want to prevent Dominion Energy from bilking their customers (also taxpayers as well as investors) from absorbing Dominion's losses by way of increased electrical charges - which has been Dominion's business model for decades.

Dominion does not lose money. They take a carrot (one of the three basic commodities of life, that being comfort) and wave it in front of your face and dare you not to absorb their losses. No pay? No way? I don't know whose lawyers are smarter. The States' or the Corporate's? I will tell you one thing, VA and NC have been in the red more times than Dominion Energy has in the past 50 years. Put that in your pipe and smoke it.

The general consumer always gets the short end of the stick and never the carrot.

When this wind project was in its inception, Dominion Energy was claiming its turbine construction could withstand 20 to 60 ft high wind driven waves without any significant loss in power output. Having lived at sea for months at a time, I can tell you winds which start up in Haiti that are charted at 35 nautical miles per hour can reach the outer banks at roughly 100 NMPH before it subsides. So, a mean of 40 ft waves is laughable as a reasonable consideration. Even though the drop off of wind speed is significant the closer the wind hits landfall and is much less powerful than the winds in the northeast, the potential for 60 ft high wind driven waves on the regular is a reality.

I can't see putting my money into a project with such a high fail to success ratio but, then again, I don't have an unlimited supply of digital or real resources to consistently throw at these new ideas for heating and cooling the populous; much less maintaining a thriving steadily moving economy to keep them hanging around long enough to right their own ships.

I've said it before, and I'll say it again….. I can't see renewable energy alone as a replacement for crude oil or coal in the foreseeable future, but I'm not a gypsy and my crystal ball is in the shop.

## 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**

**Jeffrey L. Farquhar**
Senior Land Manager
The Termo Company
3272 Cherry Avenue
Long Beach, CA 90807
Jefff@Termoco.com

**James M. Spillers, CPL, PMP, CDOA**
The Spillers Group, LLC
P.O. Box 1439
Kinder, LA 70648
JamesSpillers@SpillersGroup.org

**Transfers**

None to Report

*The Override* is, and has been Edited by Joe Munsey, RPL and Published by Randall Taylor, RPL, since September of 2006.

## 2022—2023 Officers & Board of Directors

President
**Richard Maldonado**
Spectrum Land Services
714-568-1800

Vice President
**Sarah Downs, Esq, RPL**
Southern California Gas Company
(213) 218 -5465

Past President
**Joseph D. Munsey, RPL**
Southern California Gas Company
949-361-8036

Secretary
**Marcia Carlisle**
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562-279-1957

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**Jason Downs, CPL**
Chevron Pipeline & Power
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626-269-2980

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310-746-4425

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Newsletter/Publishing Chair
**Joe Munsey, RPL**, Co-Chair
**Randall Taylor, RPL**, Co-Chair

Communications/Website Chair
**Chip Hoover**
Independent
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Membership Chair
**TBD**

Education Chair
**John R. "JR" Billeaud, RPL**
CAL-NRG
805-336-5422

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Legal Counsel
**Ernest Guadiana, Esq.**
Elkins Kalt Weintraub Rueuben Gartside LLP
310-746-4425

Golf Chair
**Jason Downs, CPL**
Chevron Pipeline & Power
310-616-6985

Nominations Chair
**TBD**

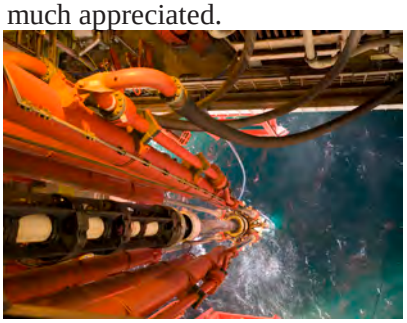
## Chapter Board Meetings

**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 Board meeting on September 15, 2022, led by Rich Maldonado, President. The topics discussed at the meeting were as follows:

- Jason Downs, CPL, Treasurer, explained the tax and accounting invoice, and payment was approved.
- JR Billeaud, RPL, Education Chair, noted the upcoming WCLI and the great speakers for the program.
- The new logo project will be headed up by Sarah Downs, Esq, RPL. Sarah also suggested offering Sponsor tables for our Luncheons in hopes of bringing new members to LAAPL.
- Amendments to Chapter Bylaws were approved by vote of the membership during Members meeting. Rich Maldonado's call for a motion to approve the amendments passed.
- Jason Downs, CPL, recommended that LAAPL present baskets to the AAPL Directors for the Huntington Beach 2023 event. He believes it would be best to team with BAPL and have each chapter contribute $1000. Rich Maldonado called for a motion to approve LAAPL's $1000 contribution, which passed.
- Jason and Sarah Downs will assume the hospitality role of communication with The Grand regarding LAAPL events, which is much appreciated.



## Treasurer's Report

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

| | |
|---|---|
| As of 9/9/2022, the LAAPL account showed a balance of | **$ 34,379.48** |
| Deposits | **$ 957.41** |
| Total Checks, Withdrawals, Transfers | **-$588.55** |
| Balance as of 11/2/2022 | **$ 34,748.34** |

## Scheduled LAAPL Luncheon Topics and Dates

**November 17, 2022**
Oscar Contreras, SoCalGas:
SoCalGas'
"Hydrogen Home Project"

**January 26, 2023**
[4th Thursday]
Annual Joint Meeting with
Los Angeles Basin Geological Society

**March 16, 2023**
Ron Stein, PTS Advance
Energy Literacy and the Future of Energy

**May 18, 2023**
Jared Berg – Bracewell Law Firm
Topic TBD
Officer Elections

## LAAPL and LABGS Hold Annual Joint Luncheon

The Los Angeles Association of Professional Landmen and the Los Angeles Basin Geological Society will hold its joint luncheon on January 26, 2023.

Please note the date of the luncheon is the fourth Thursday of January and if in person, the location is at The Grand at Willow Street Conference Center.

Will this be a virtual or in-person meeting? All indicators point to an in-person meeting – we will keep the LAAPL membership updated if advertised to the contrary.

## Jack Geerlings - RIP

**Henry John (Jack) Geerlings** lived

most of his childhood in the Los Angeles area, graduating in 1942 from Hollywood High School. He then attended UCLA and graduated from USC with a degree in Chemical Engineering and a law degree from SWU.

Jack and Nancy Prizeman met in Durango, CO and were wed in October 1967. From this marriage two families were joined, two boys and a girl as well as a son born in 1969.

Professionally, Jack worked as an oil land manager for Shell Oil and Westates Petroleum, and served as National Ethics Chairman for the American Association of Petroleum Landmen. Jack later formed his own oil company and also worked in investment counseling in Newport Beach, CA where he and Nancy have lived for 53 years.

Jack is survived by wife Nancy, daughter Janet (Dan), son John (Kate), son Jim, and stepson Sean Prizeman (Barbara), and six grandchildren: Kelly, Kevin, Jake, Matt, Cassidy and Jack. Another beloved grandson, Devon, was deceased in 2016.

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AAPL
Powering The Profession

# Region VIII Director's Report

**Jason M. Downs, CPL, AAPL Region Director**
**Senior Land Representative**
**Chevron Pipeline & Power**

| | |
|---|---|
| **Meeting:** | **AAPL Quarterly Board Meeting Highlights** |
| **Date:** | **September 11, 2022** |
| **Place:** | **JW Marriott Desert Ridge - Phoenix, Arizona** |

1. **Governmental Affairs** is currently tracking 393 bills, along with industry trade associations and other initiatives to benefit AAPL and its members

2. **Landman Learning** is finally live. This new learning management system is where you will find everything you need – and automates many tasks that previously took several steps. Landman Learning is also where you will find updated forms accessible by AAPL Members. This site will have options for forms that are included with AAPL membership, as well as a low-cost option for premium forms

3. **AAPL's Renewable Energy Certificate program** is on track for completion in October. This program will include fourteen (14) available continuing education credit hours. This will be a *certificate*, not a *certification* (i.e., CPL)

4. **AAPL's Compensation study** was published in the September/October issue of *Landman*

5. **The Oil and Gas Law Book** is ready to ship

6. **NAPE – NEW for 2023 (NAPE's 30-year anniversary)**
   - NEW Governors Panel and VIP opportunity at the closing of the Energy Business Conference (formerly Global Business Conference)
   - NEW Blockchain/Bitcoin Pavilion featuring education sessions
   - NEW NAPE Hall of Fame Awards
   - NEW American Hero Award at Charities Luncheon
   - Alex Epstein — Expo Lunch Buffet Keynote Speaker
   - NEW Energy Business Conference format featuring a technical and business track
   - NAPE is currently on track with its projected number of attendees

7. **A high-level budget projection** will be presented at the December 2022 Board meeting. Final budget presentation and discussion will be completed after finalizing AAPL's revenues from NAPE Summit 2023

8. Drafts for the **Procedures Manual** are due by **11/15/2022** from each Committee Chair

9. **Accreditation Updates**:
   - University of Texas – Permian Basin (UTPB)
     - New BBA Program: "*Energy Land Management*" (Undergraduate Degree Program – "UDP") was recently approved for *Provisional* Accreditation Status
   - Texas Tech
     - New MS Program: Interdisciplinary Master of Science-Energy" (Graduate Degree Program – "GDP") was recently approved for *Provisional* Accreditation Status
   - TCU
     - New MBA Program: "*Energy MBA*" (Graduate Degree Program – "GDP") recently transitioned from Provisional Accreditation Status to *Full* Accreditation Status

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10. AAPL's **Nominating Subcommittee** is planning to start the process for nominating AAPL Officers by moving up the date for online nominations to early October (rather than 12/1/2022). We will be seeking a diverse group (experience, geographical regions, backgrounds, skill sets, etc.) to serve our membership. Notices will be sent to Directors and local association Presidents, as well as the general membership via email and via social media sites and AAPL's publications. **The deadline for nominations will be January 10, 2023**

11. **Time and Place of Upcoming Board Meetings**

December 9-11, 2022 | Savannah, GA
Thompson Savannah
201 Port Street
Savannah, GA 31401

March 10-12, 2023 | Colorado Springs, CO
The Broadmoor
1 Lake Avenue
Colorado Springs, CO 80906

June 13-14, 2023 | Huntington Beach, CA
Hyatt Regency Huntington Beach
21500 Pacific Coast Highway
Huntington Beach, CA 92648

# LAAPL Education Report

***November 2022 – March 2023***

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

## November

| Event | Dates | Location | Speakers | Credits |
|---|---|---|---|---|
| Managing Your Lease When Production Ceases | November 16, 2022 | Live Webinar | Robert 'Eli' Kiefaber | 1 CEU |
| LAAPL November Luncheon | November 17, 2022 | The Grand, Long Beach, CA | Oscar Contreras - Topic: SoCal Gas' Hydrogen Home Demonstration Project | 1 CEU |
| Field Landman Seminar - Lake Charles, LA | November 17, 2022 | Lake Charles, LA | Mark A. Dore, Jamie Manuel, Michael R. Brassett, Gray Stream and Charles G. Blaize, Jr. | 5 CEU |
| Royatly Deductions | November 21, 2022 | Live Webinar | Marlin K. Brown | 3 CEU |
| Solar Lease Fundamentals | November 29, 2022 | Live Webinar | Phillip Guerra, CPL | 3 CEU |
| Texas Case Law Update | November 30, 2022 | Live Webinar | TBD | 1 CEU |

## December

| Event | Dates | Location | Speakers | Credits |
|---|---|---|---|---|
| AAPL RPL/CPL Certification Exam Review - Houston, TX | December 7-9, 2022 | Houston, TX | A. Frank Clam, CPL, Owen M. Barnhill, CPL and S. Scott Prather, CPL | 18 CEU; 1 CEU Ethics |
| Working Interest and Net Revenue Interest Calculations - Basic | December 13, 2022 | Midland, TX | Douglas M. Potter, CPL | 6 CEU |

## January

| Event | Dates | Location | Speakers | Credits |
|---|---|---|---|---|
| Solar Lease Fundamentals | January 10, 2023 | Live Webinar | Phillip Guerra, CPL | 3 CEU |
| LAAPL January Luncheon (Annual Joint Meeting with LABGS) | January 26, 203 | The Grand, Long Beach, CA | TBD | 1 CEU |

## February

| Event | Dates | Location | Speakers | Credits |
|---|---|---|---|---|
| AAPL RPL/CPL Certification Exam Review - Fort Worth, TX | February 8-10, 2023 | Fort Worth, TX | A. Frank Clam, CPL, Owen M. Barnhill, CPL and S. Scott Prather, CPL | 18 CEU; 1 CEU Ethics |

## March

| Event | Dates | Location | Speakers | Credits |
|---|---|---|---|---|
| AAPL RPL/CPL Certification Exam Review - Fort Worth, TX | March 8-10, 2023 | Fort Worth, TX | A. Frank Clam, CPL, Owen M. Barnhill, CPL and S. Scott Prather, CPL | 18 CEU; 1 CEU Ethics |
| LAAPL March Luncheon | March 16, 2023 | The Grand, Long Beach, CA | Ron Stein, PTS Advance - Topic: Energy Literacy and the Future of Energy | 1 CEU |

## Legislative Update

BY MIKE FLORES
CHAMPIONSHIP STRATEGIES, INC

### Call to Action

On October 6, WSPA President and CEO Catherine Reheis-Boyd issued a statement in response to Governor Gavin Newsom and others in state government who are actively driving misinformation about what affects the cost of gas in California.

**Please share this message on social media and with your appropriate stakeholders.**

*"The Governor and his Administration are failing to communicate what their policies actually cost Californians at the pump and how their decisions have led to the exact market conditions we have today.*

*California faces a supply shortage as a result of repeated irresponsible policy decisions that have led to a lack of investment in refining capacity and necessary infrastructure, making California an energy island.*

*The Governor and his Administration have called for shutting down production and refining in the state completely. Unfortunately, this will likely exacerbate cost issues over the next several years as the Governor and his regulators continue to push more unrealistic policies.*

*In fact, just a few weeks ago the Governor touted his more extreme package of climate policies that will likely increase costs. It's time for Governor Newsom to call on his regulators for a comprehensive review of state policies and regulations contributing to current market conditions."*

**Oil Company Fires Back at Gov. Newsom Over Gas Prices Accusation**

*KTLA post of October 10 by Iman Palm*

Valero Energy Corp. has released a statement responding to Gov. Gavin Newsom's accusations that oil companies are "fleecing" California drivers with disproportionately rising gas prices that cannot be explained.

The average gas price in California was $6.30 per gallon as of Oct. 10, while the national average was $3.19.

Experts have blamed the discrepancy on oil refinery maintenance and the state's limited gas supply.

However, the governor proposed a different answer.

"The fact is, they're ripping you off. Their record profits are coming at your expense," Newsom said in a Twitter video posted on Sept. 30.

David Hochschild, California Energy Commission Chairman, sent a letter to oil refinery executives seeking answers to California's dramatic gas prices increase.

"This degree of divergence from national prices hasn't happened before, regardless of planned or unplanned refinery maintenance, and no explanation has been provided. The oil industry owes Californians answers," the letter said.

Valero Energy Corp. fired back with a statement last week.

"As the Commission knows, and as countless investigations have demonstrated, market drivers of supply and demand, together with government-imposed costs and specifications, determine the market price," Valero's letter said.

The vice president for State Government Affairs at Valero Energy Corp, Scott Folwarkow, blamed the state's rigorous environmental regulations and high refinery operating costs on why prices at the pump are so disproportionately.

"California policies have made it difficult to increase refining capacity and have prevented supply projects to lower operating costs of refineries," Valero's letter said.

Newsom has called for the state's legislature to impose a windfall tax on oil companies' profits that would go back to California's taxpayers.

However, Valero Energy Corp. doesn't believe a new tax is the best course of action.

"Adding further costs, in the form of new taxes or regulatory constraints, will only further strain the fuel market and adversely impact refiners. Ultimately, those costs will pass to California consumers," Valero's response said.

To help offset high gas prices and inflation, California began sending out tax refund checks worth up

*Legislative continued on page 11*

Legislative continued from page 10

to $1,050 to eligible residents.

Patrick De Haan, the head of Petroleum Analysis at Gas Buddy, believes lower gas prices could be on the way for Californians as scheduled refinery maintenance wraps up within the coming weeks.

"I expect California prices to go back under $6, if not back to what they were before the price increase," De Haan said. "We can see the California statewide average back in the low $5 range, which is a dollar per gallon lower than where prices stand today, potentially by the end of November if everything goes well."

**Signature Collection Begins to Repeal California Oil Well Setback Law**

*By Madison Hirneisen | The Center Square October 22, 2022 07:05 AM*

Oil producers announced Thursday they have launched the signature gathering process to stop a new oil well bill, a measure they call a "political war on California's energy workers and producers."

Independent oil producers and workers are spearheading an effort to place a referendum on the 2024 ballot to repeal a law requiring 3,200-foot setbacks between new oil wells and certain areas.

Gov. Gavin Newsom signed Senate Bill 1137 last month. It prohibits the Geologic Energy Management Division (CalGEM) from approving most permits within a "health protection zone" – defined as 3,200 feet within a "sensitive receptor," including homes, schools, healthcare facilities, dorms and businesses.

The bill was heralded by supporters as a measure that will protect public health, as proximity to oil wells and gas extraction sites "poses known significant health risks due to increased air pollution and threats to drinking water quality," according to a bill analysis. The bill's authors estimate there are 5.5 million Californians who live within a mile of one or more oil and gas wells.

The measure met with swift opposition from the oil industry, who filed a proposed referendum just days after Newsom signed the bill into law. Proponents of the petition say the law "threatens to further increase California's already high gas prices" by increasing reliance on imported foreign oil "that contributes greater greenhouse gas emissions."

"This referendum will allow California voters to better control the prices they pay at the pump by removing barriers to boost the supply of our homegrown oil production," said Rock Zierman, chief

Legislative continued on page 12

Legislative continued from page 11

executive officer of the California Independent Petroleum Association, which is spearheading this effort.

Zierman added that oil producers have worked with the legislature to "ensure we have the strictest environmental regulations in the nation and world," asserting there is "no scientific justification" for the 3,200 feet setback law.

"As Governor Newsom has implored us over the past two years, we must 'follow the science' and use evidence-based data when enacting policy, something that SB 1137 fails to do," Zierman said.

Proponents of the "Stop the Energy Shutdown" petition say they have already raised over $8.1 million to support their efforts, but there is still a long way to go before the measure qualifies for the 2024 ballot.

As previously reported by The Center Square, proponents have 90 days from the statute's enactment to collect and submit over 623,000 signatures to potentially qualify the measure for the 2024 ballot, where it will ultimately be left up to the voters to decide on the law. The bill was signed into law on Sept. 16, so proponents have until mid-December to submit signatures.

Daniel Villaseñor, a spokesperson for the governor's office, told The Center Square in a statement, "California won't go back to the days of letting greedy oil companies pollute our communities."

"Big polluters are poisoning our communities, and this law promises to protect the health of over 2 million Californians – preventing new oil wells near schools and neighborhoods, and requiring pollution controls on existing oil wells," Villaseñor said. "The big polluters are trying to overturn this law to protect their billions in profits. Clean energy jobs already outnumber fossil fuel jobs by 6-to-1, and the climate package that Gov. Newsom just signed into law will create another 4 million jobs while reducing demand in petroleum by over 90%."

**Ordinance to End Oil Drilling in LA Moves Forward in 2nd Committee**

A second council committee recommended adoption of a proposed ordinance Tuesday that would phase out oil and gas extraction in Los Angeles, moving the city a step closer to banning oil drilling.

The Planning and Land Use Management Committee voted 3-0 to adopt a Mitigated Negative Declaration and move forward with the proposed ordinance despite Stand Together Against Neighborhood Drilling, a coalition of environmental justice groups, asking the committee two weeks ago to pause conducting business until Councilmen Kevin de León and Gil Cedillo resign for their role in the City Hall racism scandal.

The group released a statement ahead of the committee's Oct. 18 meeting, which was canceled, stating that "while this meeting is a critical step in the process of getting this ordinance passed and making neighborhood oil drilling a thing of the past, we believe that values of racial justice and solidarity require bold action."

Councilman Marqueece Harris-Dawson, chair of the committee, said following the vote that he decided to move forward with the item because "the result of delaying is more low-income people of color breathing bad air for a longer period of time."

"And so another one of those situations where we don't have a lot of good choices," Harris-Dawson said.

The Energy, Climate Change, Environment Justice, and River Committee voted Oct. 6 to advance its recommendation to the City Council. The Arts, Parks, Health, Education, and Neighborhoods Committee waived consideration of the item.

"We are sending a clear message to big oil," said Councilman Mitch O'Farrell, chair of the energy committee. "The city of LA will no longer tolerate oil and gas extraction."

The Los Angeles County Board of Supervisors approved a similar ordinance earlier in October. The City Council in January unanimously approved a series of recommendations aimed at banning new oil and gas wells. The draft ordinance would phase out all such oil and gas extraction activities by immediately banning new oil and gas extraction and ceasing existing operations within 20 years.

"Families — no matter where they happen to live — deserve to breathe clean air, have safe neighborhoods and an opportunity for a healthy life, free from the harmful impacts of dirty energy," O'Farrell said.

Under the draft ordinance, operators would not be able to expand their existing sites or extend the life of a well during the 20-year phase-out period.

Many community groups have lobbied Los Angeles to stop oil drilling, citing the harm it has on communities, which is disproportionately felt in working-class communities and communities of color. More than 500,000 Los Angeles County residents live within a half-mile of an active oil well.

Legislative continued on page 13

Legislative
continued from page 11

"They have waited for generations for actions," Council President Paul Krekorian said at the energy committee meeting. "They have waited for something to be done by the city to relieve their health concerns."

Krekorian responded to concerns over a potential loss of jobs and an increase in gas prices. He said less than 1% of crude oil processed in Southern California refineries actually comes from wells in Los Angeles, and the loss of oil drilling will not impact gas prices locally. On jobs, Krekorian said he believes the era of oil and gas is ending regardless.

The committee held off on voting on a separate item that would have recommended placing an oil extraction tax before voters on a future ballot.

Gov. Gavin Newsom proposed new rules last October, under which new oil wells or drilling facilities in California would have to be at least 3,200 feet from homes, schools, hospitals, nursing homes and other "sensitive locations."

Newsom cited the impact that toxic chemicals has on communities, including asthma and birth defects. The proposal is undergoing an economic analysis and public comment before taking effect. The governor has also called for a statewide phase-out of oil extraction by 2045.

A USC study published in April 2021 linked living by urban oil wells with wheezing and reduced lung function, symptoms disproportionately borne by people of color in Los Angeles. In some cases, the respiratory harm rivals that of daily exposure to secondhand tobacco smoke or living beside highways spewing auto exhaust, the researchers found.

The study focused on drilling sites in two South Los Angeles neighborhoods, Jefferson Park and North University Park, yet could have implications elsewhere in the region. About one-third of LA County residents live less than one mile from an active drilling site — and some live as close as 60 feet.

**City-Imposed Penalty of One-Year Building Moratorium Does Not Constitute a Taking**

*Bradford Kuhn, Esq., Partner*
*Law Firm of Nossaman LLP*



Local government agencies sometimes enact short-term building moratoriums for certain areas to further assess changes in land use patterns or slow growth. Those moratoriums imposed across a large area usually do not constitute a taking. But what if a moratorium is imposed solely and specifically as to a singled-out property? Does that moratorium give rise to a taking? According to a recent court of appeal opinion, the answer is no, at least when that moratorium is imposed as a penalty against the property owner for violating local building codes.

**Background**

In Lemons v. City of Los Angeles, 2022 Cal. App. Unpub. LEXIS 6541, the plaintiffs owned a single family residence located in a Historic Preservation Overlay Zone (HPOZ), and their property was designated as a "contributing element", meaning the residence contributed to the historic significance of the area. The owners sought and secured permits to undertake rehabilitation and repair of the property from the Historic Preservation Board and Cultural Heritage Commission, but they vastly exceeded what was allowed under their permit and mostly demolished the residence, leaving only a small portion of the first story wood flood and foundation. Under the City's municipal code, one of the penalties for engaging in work without a permit is the imposition of a moratorium on the issuance of any permits for new development on the property. The City ordered a one-year moratorium on plaintiffs' property.

**Lawsuit for Violation of Eighth Amendment (Excessive Fine) and Inverse Condemnation**

The property owners filed a lawsuit against the City, claiming that the moratorium was an excessive fine in violation of the Eighth Amendment, and also constituted a taking resulting in inverse condemnation liability. The trial court denied the excessive fine claim, concluding that a moratorium did not constitute a fine. The court also denied the takings claim, finding that the moratorium was not a taking, but instead a government action imposing a penalty under the municipal code. The owners appealed.

**Appellate Decision - Moratorium is Not a Fine and Does Not Constitute a Taking**

On appeal, the Court explained that the Eighth Amendment only limits the government's power to "extract payments" as punishment for an offense; a one-year moratorium on new development permits did not require the owners to pay the City a fine. The Court likewise explained that the government "need not provide compensation when it diminishes or destroys the value of property by stopping illegal activity or abating a public nuisance." The one-year moratorium on new development permits did not constitute a taking because it was a punitive measure imposed for violating the municipal code. Moreover, the concept of inverse condemnation is that the costs of a public improvement benefitting the community should be spread among those benefited rather than allocated to a single member of the community. In contrast, the purpose of a penalty such as the moratorium at issue here is to impose particular burdens on the violators -- there is no benefit transferred to the public at large. The court also rejected the owners' argument that they were constitutionally entitled to a jury trial on the inverse condemnation claim, explaining that there is no right to a jury trial on the issue of whether there has been a taking in the first instance; the right is limited to the question of damages.

**Take-Aways**

The case serves as an important reminder that a property owner's failure to comply with local municipal codes can result in significant penalties, including the potential forfeiture of the right to secure new permits for a significant period of time. The case also demonstrates that the imposition of penalties, even if they result in a diminution of value of the property, do not give rise to a claim for inverse condemnation, as there is no "taking" as a matter of law. Finally, the

*Case - RoW*
*continued on page 15*

Case - RoW
continued from page 14

right to a jury trial in an inverse condemnation action only applies to the issue of just compensation or damages - it does not apply to the determination of whether there was a taking.The U.S. Supreme Court ruled last week that the Centers for Disease Control and Prevention (CDC) exceeded its authority when it imposed a national eviction moratorium. More precisely, in Alabama Association of Realtors v. Department of Health and Human Services, the Court agreed with a district court determination that the CDC acted unlawfully in banning evictions of residential tenants who declare financial need in counties with high COVID-19 rates. In its decision, the Supreme Court concluded, "If a federally imposed eviction moratorium is to continue, Congress must specifically authorize it." While the decision is based on the CDC's authority, it is filled with unconstitutional takings undertones.

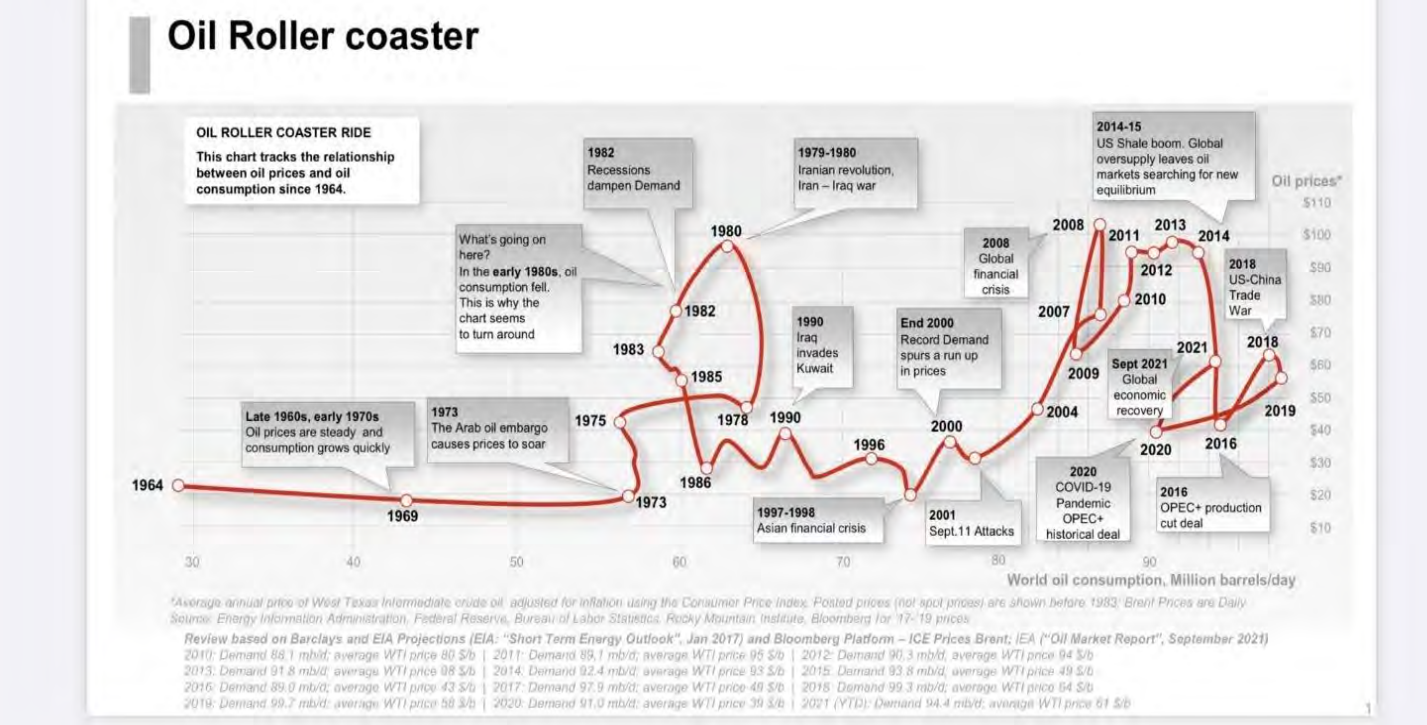
Even if Congress were to authorize a further eviction moratorium, the Supreme Court could still find it unconstitutional. In the Alabama Association of Realtors decision, the Court considered the moratorium inequitable because "preventing [landlords] from evicting tenants who breach their leases intrudes on one of the most fundamental elements of property ownership—the right to exclude." To support this statement, the Court cited its famous 1982 holding in Loretto that requiring landlords to allow installation of cable television equipment on their property was an unconstitutional taking. The Court also emphasized the importance of the right to exclude in its June 2021 Cedar Point Nursery takings decision, in which it struck down a California regulation allowing labor organizations to access agricultural employers' property for up to three hours per day, 120 days per year. In sum, the Court has ruled that violations of the "fundamental right to exclude" are unconstitutional takings, and in its recent ruling, the Court stated that the right to exclude tenants who breach their leases is also fundamental. Although this ruling is based mainly on the CDC's lack of authority to impose an eviction moratorium, the Court left the door wide open for property owner claims that eviction bans unconstitutionally violate their fundamental right to evict or exclude non-paying tenants.

It is unclear whether the Supreme Court will decide another eviction moratorium case. Property owners and property management companies have sued the State of California, local cities, and other public entities to overturn eviction bans, citing the Takings Clause among other arguments. However, the moratoriums in California and many other states and cities are set to expire this month. Thus, they may end before the lawsuits filed against them ever reach the Supreme Court. On the other hand, the State of New York just extended its eviction moratorium until January 2022. We will wait and see—and report here—if the Supreme Court rules on whether eviction bans violate the Takings Clause.

Mr. Kuhn is Chair of Nossaman's Eminent Domain & Valuation Group and can be reached at bkuhn@nossaman.com.

## INTERESTING CHART

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




## JUST AN OBSERVATION

## California Legislature Passes Bills to Create Regulatory Framework for Carbon Capture Projects

***Thomas A. Donaho, Esq., Partner, BakerHostetler***



After significant lobbying by California Governor Gavin Newsom, the California Legislature passed a flurry of climate bills last week and approved nearly $54 billion in climate spending. Included in the suite of bills sent to Newsom's desk was significant legislation pertaining to carbon capture, including S.B. 905, S.B. 1314 and A.B. 1757.

S.B. 905: Creation of a Carbon Capture Regulatory Framework

S.B. 905 requires the California Air Resources Board (state board) to establish a Carbon Capture, Removal, Utilization, and Storage Program "to evaluate the efficacy, safety, and viability of carbon capture, utilization, or storage (CCUS) technologies and carbon dioxide removal (CDR) technologies and facilitate the capture and sequestration of carbon dioxide from those technologies, where appropriate." More specifically, the bill requires the state board to:

- Adopt regulations for a unified permit application for the construction of CCUS projects throughout the state to expedite the permitting process. Relevant state agencies would be required to use the unified permit application for all permits and authorizations.
- Develop a centralized database to track the deployment of CCUS and CDR technologies and the development of CCUS projects throughout the state.
- Adopt protocols to support additional and new methods of utilization or storage of carbon dioxide.
- Adopt financial responsibility regulations applicable to CCUS projects.

The California Legislature included in the bill several provisions relating directly to property rights around CCUS projects. For example, S.B. 905 requires the secretary of the Natural Resources Agency, in consultation with the state board, to publish a framework for governing agreements regarding two or more tracts of land overlying the same geologic storage reservoir utilized in a CCUS project. The framework must include recommended requirements for submission of such agreements to authorized state agencies as well as standards for fair and reasonable compensation to property owners, site access, allocation of liability, allocation of royalty payments associated with leasing of the geologic reservoir, and financial responsibility of operators.

Additionally, the bill provides that title to any geologic storage reservoir is vested in the owner of the overlying surface estate, unless it has been severed and separately conveyed, and establishes specific requirements for conveyance of ownership interest in geologic storage reservoirs. The bill further provides that CCUS project operators must give owners of a surface, subsurface, or storage reservoir estate adjacent to a CCUS project's geologic storage reservoir/complex 60 days' notice before the CCUS project commences.



Case - O&G
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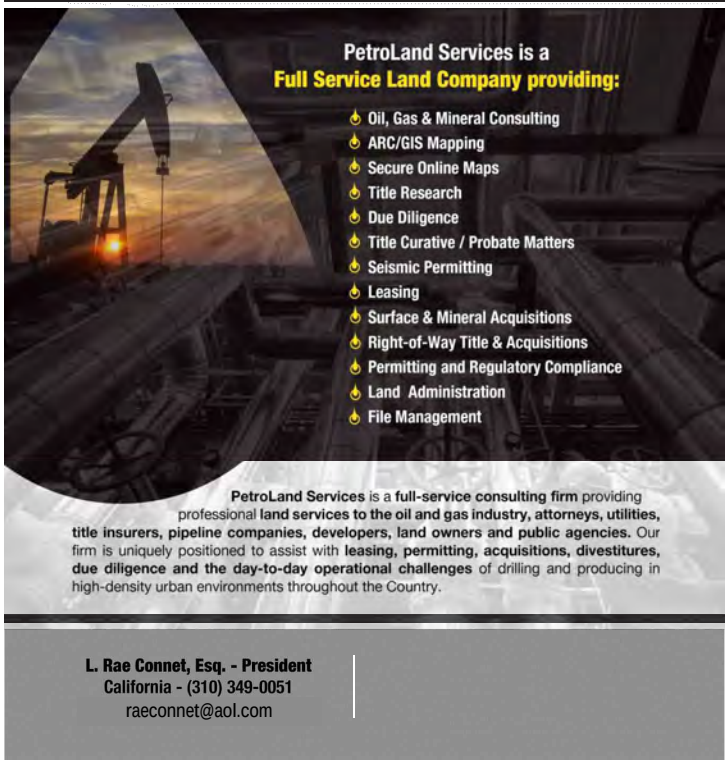


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S.B. 905 also contains numerous provisions relating to protection of the public and environmental health and safety. Those provisions:

- Authorize the state board to require changes in operations of a CCUS project where monitoring and reporting indicate increased seismic activity or carbon dioxide leakage outside the geologic storage reservoir.
- Require the California Geologic Survey to establish a working group, the Geologic Carbon Sequestration Group, to provide expertise on regulatory guidance to the state board and advise on suitable locations for injection wells.
- Require the state geologist to report to the state board seismic activity or leakage of carbon from a CCUS project.

Similar to many state mining laws, S.B. 905 includes financial responsibility provisions that impose certain obligations on a CCUS project operator. More specifically, the bill requires operators to maintain financial responsibility for a period of time sufficiently long to demonstrate that the risk of carbon dioxide leakage poses no threat to public health, safety, and the environment, but not less than 100 years after the last date of injection of carbon dioxide into the geologic storage reservoir.

The operator is further required to:

- Submit a plan to the state board to cover short- and long-term costs associated with corrective action, plugging and abandonment, monitoring, site care and closure, emergency and remedial response, liability associated with resultant seismic activity, loss of carbon dioxide containment, and protection of drinking water quality.
- Show proof to the state board that there is a binding agreement among relevant parties that drilling or extraction that may penetrate the geologic storage reservoir is prohibited for a period of time no less than 100 years.
- Create an air monitoring and mitigation plan to track and minimize potential toxic air contaminants.
- Take steps to avoid any impact on residents in nearby communities and generally comply with state health and safety regulations intended to protect the public from air, water, and soil pollution.

S.B. 1314: Enhanced Oil Recovery and CCUS

With the passage of S.B. 1314, the California Legislature declared that the purpose of "carbon capture technologies, and carbon capture and sequestration is to facilitate the transition to a carbon-neutral society and not to facilitate continued dependence upon fossil fuel production." As such, the bill prohibits an operator from injecting a concentrated carbon dioxide fluid produced by a CCUS project into a Class II injection well for enhanced oil recovery or facilitation of enhanced oil recovery from another well.

A.B. 1757: Carbon Sequestration Targets

In A.B. 1757, the California Legislature charged the state's Natural Resources Agency, in collaboration with various other entities, the state board, and an expert advisory committee, to establish a range of targets for natural carbon sequestration for 2030, 2038, and 2045. The bill both recognizes the role of carbon sequestration in the effort to reach a condition of carbon neutrality and announces the state's intention to support CCUS efforts.

Summary

S.B. 905 provides the scaffolding upon which the state of California intends to build a regulatory framework for carbon capture projects in the years to come. There remains substantial regulatory uncertainty for potential stakeholders in CCUS projects within the state of California, but S.B. 905 is both a first step toward addressing that uncertainty and a declaration of the state's intent to play a role in the rapidly developing CCUS economy. This declaration is further documented by A.B. 1757, which charges state agencies with establishing carbon sequestration targets for the next several decades. However, consistent with the state's previous efforts to facilitate a move away from reliance on fossil fuels, S.B. 1314 will preclude the use of carbon capture technologies for purposes of enhanced oil recovery. With the passage of various climate bills last week, California has begun the process of establishing a regulatory pipeline for desired CCUS projects. However, there remains much work to be done.

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# Allocation Wells Part II

*By Alyce Boudreaux Hoge, Esq.*



*Alyce Boudreaux Hoge is an attorney licensed in Texas and Louisiana. She has practiced energy and mineral law for the past 30+ years. The founder of Land Training LLC, she also teaches the Professional Land Management and Division Order Certificate Programs at Midland College in Midland, Texas. Previously, she has taught PLM programs at the University of Texas (PETEX) and the University of Houston. A native of Louisiana, Alyce is fond of saying she gives "legal advice with Cajun spice."*

**Calculating interests in an Allocation Well**

In Part I of this series, we learned that one of the formulas for calculating interests in an allocation well is:

| | |
|---|---|
| Allocation Royalty Calculation | Lateral length of horizontal wellbore on lessor's tract / Total horizontal wellbore length |

For Part II of this series, we thought it would be beneficial to apply the allocation tract factor and do an actual calculation based on a hypothetical.

Let's assume that there is a horizontal well that traverses four separate tracts. The horizontal well has a total **10,130'** of lateral length.

Tract 1: 320 acres, **2,310'** of horizontal wellbore - *Owner (A) signed lease with a 3/16 royalty
Tract 2: 80 acres, **2,640'** of horizontal wellbore – Owner (B) signed lease with a 1/8 royalty
Tract 3: 320 acres, **2,640'** of horizontal wellbore – Owner (C) signed lease with a 1/4 royalty
Tract 4: 80 acres, **2,540'** of horizontal wellbore – Owner (D) signed lease with a 3/16 royalty

*Assume all owners own 100% mineral interest in the tract.

**How are the interests of the parties calculated?**

**Step 1:** First, let's calculate each owner's Allocation Factor:

Tract 1: 2,310' of wellbore on lessor's tract/10,130 Total Horizontal Wellbore Length = 0.22803554
Tract 2: 2,640/10,130 = 0.26061204
Tract 3: 2,640/10,130 =0.26061204
Tract 4: 2,540/10,130 = 0.25074038

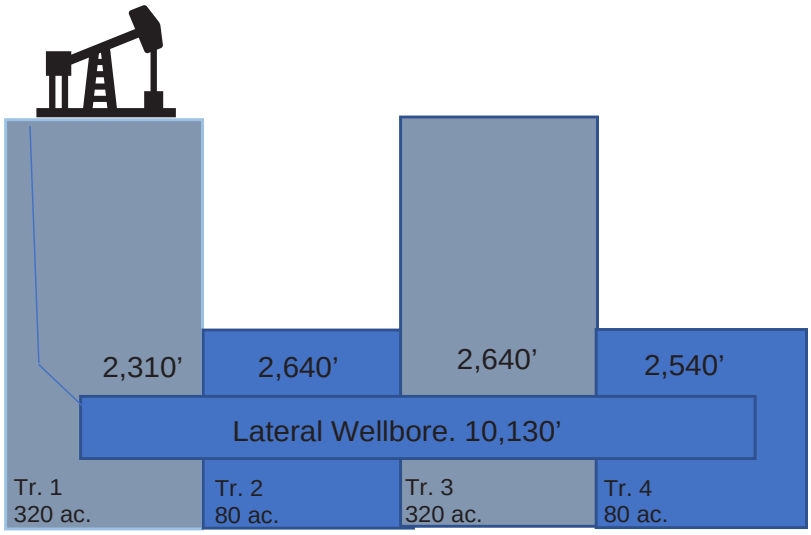
**Step 2:** Now, let's include the owner's royalty interest into the calculation:
Tract 1: .1875 * 0.22803554 = 0.04275666 (Owner A's Net Revenue Interest)
Tract 2: .125 * 0.26061204 = 0.0325765 (Owner B's NRI)
Tract 3: .25 * 0.26061204 = 0.06515301 (Owner C's NRI)
Tract 4: .1875 * 0.25074038 = 0.04701382 (Owner D's NRI)

**Question #1:** Question #1: Why didn't we include the acres in the Owner's tract in the calculation?

**Answer:** Because the horizontal wellbore may not traverse the entire tract. So, even if it's a 320-acre tract of land, the wellbore may only traverse a part of the 320 acres.

For the hypothetical above, this is what it would look like:

*Allocation*
*continued on page 23*




**Question #2:** Question #2: Why do Tract 1 and Tract 4 have less of the lateral wellbore than tracts 2 and 3?

**Answer:** Tract 1 has fewer lateral feet of wellbore because the well was drilled on that tract and measurements for the horizontal length don't begin until the first "take point." The take point is where the horizontal wellbore begins. This is the part that is going to be perforated for fracking.
Tract 4 has fewer lateral feet because, under Texas law, a wellbore can be no closer than 467' from a lease or property line. This is also known as the last take point.

In Part III of this series on Allocation Wells we will compare the interests and determine which is more profitable for the mineral owner – a horizontal well or a vertical well.

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*www.landtraining.net*

**Reference Sources and Suggested Reading**

1. Allocation Wells in the Permian Basin, presented to the Rocky Mountain Mineral Law Institute in Santa Fe NM – July 20-22, 2017 by Michael E. McElroy, McElroy, Sullivan, Miller & Weber, LLP, Austin, Texas
2. Ernest E. Smith, Applying Familiar Concepts to New Technology: Under the Traditional Oil and Gas Lease, a Lessee Does Not Need Pooling Authority to Drill a Horizontal Well That Crosses Lease Lines, 3 Oil & Gas, Nat. Resources & Energy J. 553, 569 (2017).
3. Clifton A. Squibb, The Age of Allocation: The End of Pooling As We Know It?, 45 Tex. Tech L. Rev. 929, 948 (2013).
4. Browning v. Luecke 38 S.W.3d 625, 647 (Tex. App. – Austin, 2000). PLAINTIFFS' ORIGINAL PETITION FOR JUDICIAL REVIEW in the 53rd District Court, Travis County. Monroe Properties, Inc. et al. vs Railroad Commission of Texas, No. D-1-GN-18-001111.
5. Bret Wells, Allocation Wells, Unauthorized Pooling, and the Lessor's Remedies, online at https://www.baylor.edu/law/review/doc.php/271080.pdf [landtraining.us17.list-manage.com]
6. Doug J. Dashiell, Allocation Wells/Production Sharing Agreements/Pooling, Oil, Gas & Energy Resources Law (October 2015)
7. POOLING WITHOUT POOLING: THE HISTORY OF PSA AND ALLOCATION WELLS IN TEXAS Lance B. Joiner, Joiner Law PC League City, Texas www.joiner-law.com [landtraining.us17.list-manage.com]

# First Florida Oil Well

*By Mr. Bruce A. Wells, Executive Director*
*American Oil and Gas Historical Society*


## Humble Oil Found Oil in 1943, After lawmakers Offered a $50,000 Bounty.

Among its petroleum history records, Florida's first — but not last — unsuccessful attempt to find commercially viable oil reserves began in 1901, not far from the Gulf Coast panhandle town of Pensacola. Two exploratory wells, the first drilled to a depth of 1,620 feet and the second reaching 100 feet deeper, were abandoned.

Whether drilled using science or intuition, contemporary accounts of Florida's two 1901 wells reveal only a small footnote: the state's first two "dry holes." As U.S. petroleum demand grew during World War I, an oilfield still had not been found. The panhandle region looked promising, despite many more failed drilling ventures.

Florida's first oil well's site is by present day Big Cypress Preserve in southwest Florida, about a 30-minute drive from the resort city of Naples.



By 1920, Indian legends and a petroleum company stock promoter's claim of oil inspired another attempt near what would later become Falling Waters Park, about 100 miles east of Pensacola. Steam-powered cable-tools with a wooden derrick drilled to a depth of 3,900 feet.

Brief signs of natural gas at the well excited area residents with a false report of a possible gusher. Undeterred, the exploration company continued to drill to 4,912 feet before finally giving up. No commercial amount of oil was found and the well was capped in 1921. Another Florida dry hole.

## Barron Collier's Tamiami Trail

Around this time, one of Florida's most revered visionaries and entrepreneurs, Barron G. Collier, was busily purchasing land in the sparsely populated southwest part of the state. Between 1921 and 1923, he acquired about 1.3 million acres that would eventually become Collier and Hendry counties, including what is now the "Big Cypress Preserve."

*Florida Well*
*continued on page 25*

*First Florida oil well pump jack and marker at Sunniland No. 1 well*
*On September 26, 1943, after expending about $1 million and reaching a depth of 11,626 feet, Humble Oil Company brought in Sunniland No. 1, Florida's first producing oil well. Photo by Bruce Wells.*

Collier had made his fortune in streetcar advertising sales, beginning in his native Memphis and spreading from New York to San Francisco as Consolidated Street Railway Advertising Company. With his capital and a vision of Florida alien to most, one of his first challenges was construction of the Tamiami Trail (U.S. 41).

This road, extending for 368 miles from Tampa southward along the Gulf coast to Naples, then eastward to Miami, was built through some of the most difficult terrain in the United States – mostly dense swamps and wilderness infested with snakes and alligators.

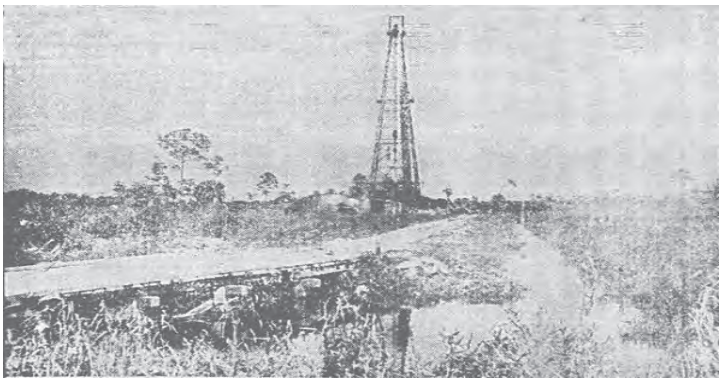
Barron Collier's advocacy and personal financial backing was key to successful completion of the Tamiami Trail in April 1928. Ever the savvy businessman, Collier negotiated his first oil lease in the county with Gulf Oil Company in the mid 1930s, despite Florida's still unbroken string of dry holes.

Gulf Oil brought in 50 men to conduct seismic testing, using the first big-wheeled "swamp buggy" vehicles of their type in the county. Gulf established headquarters in Everglades City, then the county seat, and began the search. For 10 years, Gulf searched.

Gulf Oil drilled several wells, some reaching depths of 6,000 feet, but ultimately, seismic tests convinced company geologists that full scale drilling was not warranted. In 1938, Gulf Oil pulled out of the search for oil in Florida.

## Bounty for First Florida Oil Well

By 1939, petroleum exploration companies had drilled almost 80 expensive dry holes, the deepest to a depth of 6,180 feet. Meanwhile in Texas, the 1901 Spindletop gusher had been followed by dozens of oilfield discoveries. Florida legislators, desperate for their state to become an oil producer, offered a $50,000 bounty for the first discovery.



*First Florida oil well Collier County newspaper story The Collier County News, one of Barron Collier's many ventures, enthusiastically reported Sunniland No. 1 and provided its readers with a primer on oil drilling and photographs of the rig and site.*

Hoping to find success at greater depth, Peninsular Oil and Refining Company drilled in Southwest Florida's Monroe County to 10,006 feet, but still found no oil.

Florida Well
continued on page 26

Collier's confidence nevertheless remained unshakable. His son relates of the time, "I said to dad, 'You know, perhaps we have to face the fact that maybe there is no oil in Collier County.' Well, he was just absolutely furious. He shook his finger under my nose and said, 'Just don't let anybody tell you that there isn't any oil in Collier County.' And when I looked at him, he smiled and said, 'I can smell it.'"

Following their Monroe County disappointment, Peninsular executed a lease assignment to Humble Oil and Refining Co. and Humble began searching near the Sunniland watering stop on the Atlantic Coast Line Railroad.

Barron Collier remained confident that oil would be found in southwest Florida, but when he died in 1939, oil in Florida remained an unrealized dream.

## 1943 Sunniland Oilfield Discovery

At Sunniland, the search continued, with the drilling done by the Loffland Brothers of Tulsa, Oklahoma, one of the foremost drilling companies in the country. On September 26, 1943, after spending about $1 million and reaching a depth of 11,626 feet, Humble Oil Company completed its Sunniland No. 1, Florida's first producing oil well.


*First Florida oil well historic marker for oilfield, east of Naples. Humble Oil accepted the $50,000 prize offered by the state, added $10,000 – and donated the $60,000 equally between the University of Florida and the Florida State College for Women.*

The historic wellsite is about 12 miles south of Immokalee, by present day Big Cypress Preserve and a short drive from the resort city of Naples.

Initial daily production was 140 barrels of oil and 425 gallons of salt water, which eventually settled down to 20 barrels per day. This was no gusher, but it proved the tenacious Barron Collier's wildcatter intuition to have been right on target. Predictably, Humble Oil Company's discovery sparked a flurry of lease purchases and wildcat wells.

## Bibikos' *At the Well Weekly Round-up*



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

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

**Interesting**

- **D.C. Circuit Backs FERC's OK of Adelphia Pipeline Purchase**. The D.C. Circuit upheld FERC's approval of the Adelphia Gateway Project, relying on FERC's statement that "the benefits that the Adelphia Gateway Project will provide to the market outweigh any adverse effects on existing shippers, other pipelines and their captive customers, and on landowners and surrounding communities" and rejected claims that FERC did not conduct a rigorous environmental review. *Delaware Riverkeeper Network v. FERC*, --- F.4th ----, No. 20-1206, 2022 WL 3036392 (D.C. Cir. Aug. 2, 2022).
- ***FERC Can't Prevent Debtor's Rejection of Regulated Pipeline Contracts.*** The Fifth Circuit rejected four orders issued by FERC purporting to bind a debtor to continue performing its gas transit contracts even though it rejected them during bankruptcy. *Gulfport Energy Corp. v. FERC*, --- F.4th ----, No. 21-60017, 2022 WL 2815475 (5th Cir. July 19, 2022
- **Mariner East.** [Update] Energy Transfer pleaded no contest and agreed to a plea deal with the Attorney General in connection with Mariner East construction activities. Energy Transfer will pay for independent evaluations of potential water quality impacts for homeowners from the construction of the Mariner East 2 Pipeline and offer approved mechanisms for restoring or replacing the impacted private water supplies. Energy Transfer will also pay $10 million towards projects that improve the health and safety of water sources along the routes of the pipelines. The PUC reduced a $51,000 penalty imposed in June on Sunoco Pipeline LP for violations during construction of its Mariner East pipeline system through a Delaware County apartment complex. The pipeline company now faces only $3,000 in fines.
- **Mountain Valley Pipeline**. Joe Manchin and Chuck Schumer struck a deal that would lead to MVP permit approvals and give the D.C. Circuit jurisdiction over litigation involving the pipeline project. FERC also has granted a four-year extension to complete the Mountain Valley Pipeline. The federal authorization was due to expire in October of this year, but has now been extended through October 2026. The move by Manchin triggered a backlash from environmentalists and Senator Bernie Sanders, who recently threatened to hold up a government funding bill if MVP provisions remain.

  [Red-hot Update] Mountain Valley Pipeline. Democratic Senator Joe Manchin tried to insert some regulatory reform provisions in funding bills to help move MVP along, but he has abandoned, for now, his push to speed up the permitting process for energy projects. The developers of the MVP project say they are disappointed the energy permit reform bill failed but remain optimistic about pending approvals and starting operations in the second half of 2023 as currently planned.
- **Tennessee Gas Pipeline**. In mid July, Tennessee Gas Pipeline confirmed a natural gas release and fire on a pipeline segment of its 300 system in a rural area of McKean County, Pennsylvania.
- **Williams.** Williams and PennEnergy announced that they have entered into an agreement to support the marketing and delivery of certified, low emissions next generation natural gas. Williams is also planning the Regional Energy Access Expansion Project.

**Headlines & Holdings – Appalachia**

- **Ohio Royalty Owners Failed to Allege Pre-Suit Notice of Breach of O+G Lease.** In a class action alleging that a lessee improperly deducted post-production costs from royalty payments, a federal court in Ohio dismissed a complaint without prejudice to refile because the royalty owners failed to allege compliance with the lease's provision requiring notice of a breach before filing suit, rejecting the royalty owners' argument the lawsuit itself is sufficient notice and holding instead that compliance with the notice provision is a condition precedent to recovery. *Kirkbride v. Antero Res. Corp.*, --- F. Supp. 3d ----, No. 2:22-CV-2251, 2022 WL 4329336 (S.D. Ohio Sept. 19, 2022).

*Bibikpos' continued on page 28*

- **Ohio Federal Court Denies Cross-Motions for Summary Judgment in ORRI Dispute.** In a dispute over the payment of overriding royalty interests, a federal court in Ohio denied cross-motions for summary judgment because fact issues pervaded whether the ORRIS attached to oil and gas production on "drilling units" targeting the Utica Shale/Point Pleasant formation or whether those ORRIs are limited to more shallow formations only. *Sabre Energy Corp. v. Gulfport Energy Corp.*, --- F. Supp. 3d ----, No. 2:19-CV-5559, 2022 WL 4376228 (S.D. Ohio Sept. 22, 2022).

- **Ohio Court Says Oil & Gas Lease Destroys Surface Owner's Adverse Possession Claim.** A court of appeals in Ohio rejected a surface owner's claim of title to property by adverse possession, holding that a 1958 lease gave the lessee and its successors the right to possess the surface estate to develop the underlying oil and gas and therefore precluded a finding that the surface owner had "exclusive use" of the property for the statutory period in order to acquire title by adverse possession. *Cottril v. Quarry Enterprises, LLC*, --- N.E.3d ----, No. 2022 CA 00011, 2022 WL 4481613 (Ohio Ct. App. September 27, 2022).

- **Ohio Supremes Decline to Apply Duhig Rule in O+G Title Dispute.** The Ohio Supreme Court held that the "Duhig" rule – which states that if both a grant and a reservation of oil and gas in a warranty deed both cannot be given full effect, then the grantor's reservation fails – did not estop the owners of a reserved fractional interest in oil and gas from claiming title, concluding instead that the oil and gas owners had good title pursuant to the Marketable Title Act. *Senterra, Ltd. v. Winland*, --- N.E.3d ----, No. 2020-0197, 2022-Ohio-2521, 2022 WL 2919887 (Ohio July 26, 2022).

- **Ohio Federal Court Certifies Class of Oil Gas Royalty Owners Claiming Breach of Market Enhancement Clause.** A federal court in Ohio certified a class of plaintiffs alleging that their lessee had "violat[ed] uniform oil-and-gas leases by underpaying royalties owed to Plaintiffs in connection with Defendant's receipt of gross proceeds from the sale of marketable natural gas liquids[, or 'NGLs']" and "improperly reduced class members' royalty payments by deducting the costs incurred to transform the natural gas stream taken from landowners' wells into 'marketable' natural gas products … that [Defendant] could sell at various market hubs." *Grissom v. Antero Res. Corp.*, --- F. Supp. 3d ----, No. 2:20-CV-02028, 2022 WL 3139378 (S.D. Ohio Aug. 6, 2022).

- **Ohio Federal Court Says Liquid Hydrocarbons are Condensate, not Oil, for Oil & Gas Royalty Purposes.** In a case in which landowners challenged SWN's payment of royalties, a federal court in Ohio held that the liquid hydrocarbons produced by the wells at issue are condensate, not oil, as a matter of Ohio law, and therefore royalties are payable based on 1/8 of the proceeds from the sale of actual gas production from the wells (as opposed to oil production) pursuant to the parties' oil and gas lease, but the court denied the landowners any damages because they did not produce evidence that they received less than the required payment. *Madzia v. SWN Production (Ohio) LLC*, --- F. Supp. 3d ----, No. 2:20-CV-2608, 2022 WL 4237458 (S.D. Ohio Sept. 14, 2022).

- **Pennsylvania Federal Court Says Oil & Gas Cotenants are not Necessary or Indispensable Parties.** A federal court in Pennsylvania denied a bid to dismiss a complaint for lack of necessary and indispensable parties, holding that fifty-percent co-owners who ratified their interest in three of the four lots subject to the oil and gas leases in question lack of a "common right" with the plaintiffs even though the plaintiffs may be liable over to the absent co-tenants for their share of production under co-tenancy principles. *Sugar Bowl Ranch, LLC, v.* SWN PRODUCTION COMPANY, LLC --- F. Supp. 3d ----, No. 4:22-CV-00287, 2022 WL 4472452 (M.D. Pa. Sept. 26, 2022).

- **Pennsylvania Superior Court Addresses Oil & Gas Reservation vs. Exception.** The Superior Court of Pennsylvania held that a deed retaining ownership of oil and gas "together with" the rights to drill and operate created no new right or interest in the grantor and therefore the oil and gas clause constituted an "exception" of oil and gas rights as opposed to reservation. *Hunnell v. Krawczewicz*, --- A.3d ----, No. 1367 WDA 2021, 2022 WL 4542006 (Pa. Super. Sept. 29, 2022).

- **Pennsylvania Superior Court Holds that Six-Year Statute of Limitations Applies to Oil & Gas Co-Tenant's Accounting Claim.** In a case involving a dispute between co-tenants of oil and gas interests, the Superior Court of Pennsylvania held that a statutory cause of action under 68 P.S. § 101 – providing for any "tenants in common, not in possession, to sue for and recover from such tenants in possession his or their proportionate part of the rental value of said real estate" – has a six-year statute of limitations, reasoning that (a) the four-year statute of limitations for actions involving breach of contract does not apply; and (b) given the lack of any other applicable provision, the state's default six-year statute of limitations (42 Pa.C.S. § 5527(b)) applies for an accounting dispute between co-owners of real property for income received from the property. *KEM*

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*Resources, LP v. Deer Park Lumber, Inc.*, --- A.3d ----, No. 619 MDA 2021, 2022 WL 2717774 (Pa. Super. July 13, 2022).

- **Federal Court in Pennsylvania Dismisses Development Covenant Claim against SWNPC.** A federal court in Pennsylvania dismissed a claim for breach of the implied covenant of development against SWNPC, holding that the implied covenant to further develop the leased premises did not apply given that SWNPC established production and absent any allegation of fraud or bad faith in the lack of further development the lessors' claim must be dismissed. *Diehl v. SWN Production Company, LLC*, --- F. Supp. 3d ----, No. 3:19-CV-1303, 2022 WL 3371327 (M.D. Pa. Aug. 16, 2022).

- **Commonwealth Court Says No Automatic ERA Standing to Challenge Oil & Gas Development Authorized by Local Ordinances.** The Commonwealth Court rejected a challenge to a local ordinance authorizing oil and gas development, holding (among other things) that objectors do not have automatic standing to challenge these local ordinances under the Environmental Rights Amendment or the PA Supreme Court's plurality in *Robinson Township*. The court stated that "*Robinson Township* in no way announced a new rule of law that individual objectors have automatic standing to pursue the validity of a zoning ordinance in the abstract or that oil and gas development is necessarily incompatible with Pennsylvania citizens' constitutional rights. In fact, Pennsylvania courts have, after *Robinson Township* was decided, held that oil and gas development is compatible with other uses in rural and agricultural districts upon an analysis and decision by the local governing body."*Lodge v. Robinson Twp. Zoning Hearing Bd.*, --- A.3d ----, No. 813 C.D. 2020, 2022 WL 3094370 (Pa. Cmwlth. Aug. 4, 2022).

- **New York Federal Court Resolves Surface-Use Dispute Between Oil & Gas Lessee and Gathering Company.** In a surface-use dispute between an oil and gas producer and a gathering company, a federal court in New York concluded that the gas producer had rights to use its leases to construct and operate a pipeline near and across the gathering company's pipelines despite easements held by the gathering company to construct and operate its lines, holding that the gas producer's leases grant surface rights that predate the gathering company's easements. *K. Petroleum, Inc. v. Lenape Gathering Corp.*, --- F. Supp. 3d ----, No. 22-CV-334-LJV, 2022 WL 4134237 (W.D.N.Y. Sept. 12, 2022).

- **West Virginia Forced Pooling Statute Upheld.** A federal court in West Virginia issued an order granting a motion to dismiss a lawsuit to block Senate Bill 694, relating to pooling and unitization, holding that the plaintiffs sued the wrong government officials and did not allege harm resulting from the pooling statute.

- **Third Circuit Rejects Landowner Class Action against EQT for Natural Gas Storage.** The Third Circuit rejected a federal judge's certification of a class of landowners who claim that EQT improperly stored natural gas beneath their homes without paying them. *Laudato v. EQT Corp.*, --- F.4th ----, No. 22-1224, 2022 WL 3081871 (3d Cir. Aug. 3, 2022).

- **Third Circuit Joins Other Courts of Appeal Holding that State Climate-Change Claims Belong in State Court.** The Third Circuit held that the climate change case brought by Hoboken, NJ against Chevron belongs in state court, not federal court, stating as follows: "Our federal system trusts state courts to hear most cases—even big, important ones that raise federal defenses. Plaintiffs choose which claims to file, in which court, and under which law. Defendants may prefer federal court, but they may not remove their cases to federal court unless federal laws let them. Here, they do not. Oil companies ask us to hear two sweeping climate-change suits. But the plaintiffs filed those suits in state court based only on state tort law. And there is no federal hook that lets defendants remove them to federal court." *City of Hoboken v. Chevron Corp.*, --- F.4th ----, No. 21-2728, 2022 WL 3440653 (3d Cir. Aug. 17, 2022).

- **Third Circuit Scraps Senators' Challenge to DRBC Frac Ban for Lack of Standing.** In a case in which PA senators and municipalities challenged DRBC's ban on frac'ing in the Delaware River Basin, the Third Circuit held that the senators did not have Article III standing to challenge the ban and municipalities alleged only conjectural or hypothetical injuries that are insufficient for standing. *Yaw v. Delaware River Basin Commission*, --- F.4th ----, No. 21-2315, 2022 WL 4283534 (3d Cir. Sept. 16, 2022).

**Headlines & Holdings - Beyond Appalachia**

- **Louisiana Federal Court Enjoins Biden Halt on Oil & Gas Leasing.** A federal court in Louisiana enjoined President Biden's Executive Order that "paused" oil and gas leasing on federal lands, holding that the action violated the federal APA in various respects. *State of Louisiana v. Joseph R. Biden*, --- F. Supp. 3d ----, No. 2:21-CV-00778, 2022 WL 3570933 (W.D. La. Aug. 18, 2022).

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- **ORRI "Free and Clear" Clause in North Dakota Doesn't Preclude Deducts for Post-Production Costs.** The Eighth Circuit held that an assignment of an overriding royalty interest calling for payment "free and clear" of costs means that the override is free of standard costs (*i.e.*, production costs) but may be subject to deductions for post-production costs. *Highline Expl., Inc. v. QEP Energy Co.*, --- F.4th ----, No. 21-3662, 2022 WL 3051646 (8th Cir. Aug. 3, 2022).

- **North Dakota Supreme Court Revives State's Oil & Gas Royalty Underpayment Claim.** The North Dakota Supreme Court held that the state established a claim for underpaid royalties under N.D.C.C. § 47-16-39.1, which obligates a lessee or well operator to pay royalties to lessors, despite claims by the well operator that the state did not prove the existence of a lease between the parties. *Newfield Expl. Co. v. State ex rel. N. Dakota Bd. of Univ. & Sch. Lands*, --- N.W.3d ----,No. 20220022, 2022 WL 3970163 (N.D. Sept. 1, 2022).

- **North Dakota Supreme Court Says Statute Giving Companies Right to Landowner's Pore Space is an Unconstitutional Taking.** The North Dakota Supreme Court invalidated a statute as an unconstitutional taking because it purported to give companies unfettered access to a surface owner's pore space for subsurface disposal operations without compensating surface owners and immunized companies from liability for trespass, nuisance or other torts. *Northwestern Landowners Ass'n v. State*, --- N.W.2d ----, No. 20210148, 2022 ND 150, 2022 WL 3096724 (N.D. August 4, 2022).

- **Texas Appellate Court Confirms Regulatory Taking Against Dallas for Denying Oil & Gas Company Special Use Permits.** A court of appeals in Texas upheld a judgment for damages in favor of an oil and gas company for a regulatory taking of its rights to produce minerals under oil and gas leases within the City given the City's failure to approve special use permits. *City of Dallas, TX v. Trinity East Energy, LLC*, --- S.W.3d ----, No. 05-20-00550-CV, 2022 WL 3030995 (Tex. App. Aug. 1, 2022).

- **Wyoming Supreme Court Says Oil & Gas Company can Deduct Certain Fees for Tax Purposes.** In a severance tax case, the Wyoming Supreme Court held that an oil and gas company could deduct some of its pipeline reservation fees from gross production revenues for taxation purposes, but only for months when it transported at least some gas on each pipeline, and also could deduct a portion of fees used to recoup pipeline construction costs, but the company could not deduct any fees for months in which it transported no gas on the pipeline. *WPX Energy Rocky Mountain, LLC v. Wyoming Department of Revenue*, --- P.3d ----, No. 2022 WY 104, 2022 WL 3643356 (Wyo. Aug. 24, 2022).