Award Winning

The Override

Every Landman Wants One!

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Los Angeles Association of Professional Landmen

Presidents Message

Jason Downs, RPL, President
Breitburn Management Company LLC

For those who read the September & November messages (If you have not, please visit www.laapl.com to view any prior Overrides), I'll continue discussing "This is my best attempt to be a true "Californian" and complain why Rule of Capture doesn't work. (It however works extremely well for a select few.) I'll dodge your bullets if this happens to be your sacred cow. So where should we start looking for a solution? I have a few abstract thoughts, though I doubt any of these will ever become reality in California. So this exercise is just for fun and will continue discussing the topic in future 2014-15 President's Messages."

Abstract thought #2: Create laws aimed to pool mineral owners with their respective pools being drained. (I.E. Texas pooling or expand Drilling Districts statewide)? Purely hypothetical":

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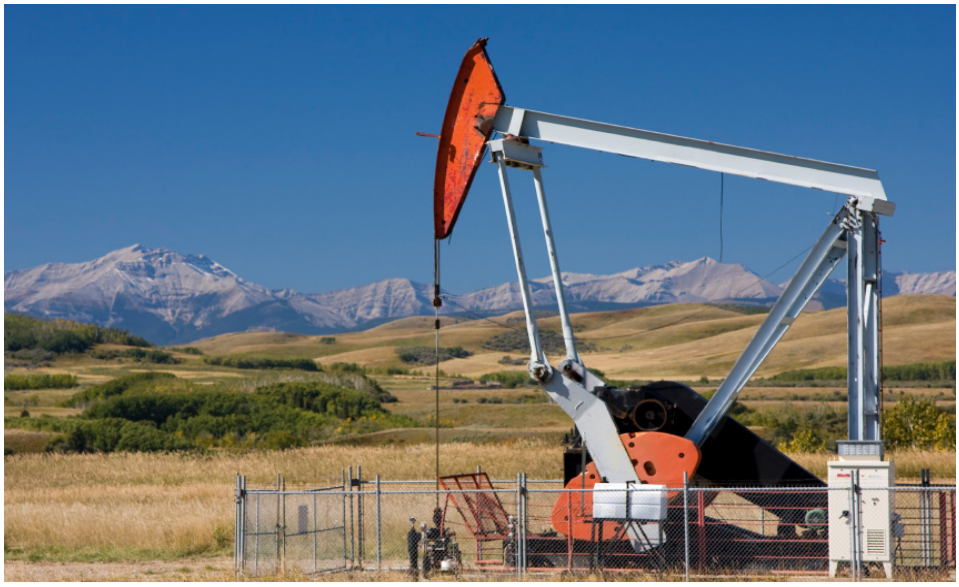

Luckily before researching I received a great Memo regarding the subject from LAAPL member Peter Pochna, Peter was gracious enough to provide a few pointers. Starting with, "The issue you address has been successfully dealt with in California in the past and that it is not necessary to reinvent the wheel…. More to the point for those of us who work with oil and gas interests in Los Angeles, there has evolved a process whereby Oil and Gas Units are formed, the West Pico Unit which is owned and operated by Breitburn and Pacific Coast Energy Company is a perfect example of how the interests of local landowners are protected."

To illustrate Peter's point, please see a few excerpts from the LA City Code.

Los Angeles City Oil Field Area--Each application for the establishment of an oil drilling district in Los Angeles City Oil Field Area shall:

(a) Include property not less than one acre in size, bounded on each side by a public street, alley, walk or way and such district shall be wholly contained within the Los Angeles City Oil Field Area.

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Meeting Luncheon Speaker

"Social License to Operate"

Dan Tormey, Ph.D., P.G., Principal, ENVIRON International Corporation, Los Angeles, will be our luncheon speaker. Dr. Tormey is an expert in energy and water and conducts environmental reviews for both government and industry. He works with the environmental aspects of all types of energy development, with an emphasis on oil and gas, including hydraulic fracturing and produced water management, pipelines, LNG terminals, refineries and retail facilities.

Dr. Tormey was the principal investigator for the peer-reviewed, publicly-available, Hydraulic Fracturing Study at the Baldwin Hills of Southern California, on behalf of the County of Los Angeles and the field operator, PXP, now Freeport-McMoran Oil and Gas.

He has a Ph.D. in Geology and Geochemistry from MIT, and a B.S. in Civil Engineering and Geology from Stanford. Dr. Tormey has worked throughout the USA, Australia, Indonesia, Italy, Chile, Ecuador, Colombia, Venezuela, Brazil, Senegal, South Africa, Armenia and the Republic of Georgia.

KELO: THE CASE THAT MADE EMINENT DOMAIN INFAMOUS

Joseph D. Larsen, Esq., Associate, Rutan & Tucker, LLP

Less than a decade ago, eminent domain enjoyed its place as a relatively inconspicuous practice area in the legal community. That all changed on June 23, 2005 – the day the United States Supreme Court issued its decision in *Kelo v. City of New London* 545 U.S. 469 (2005).

Kelo tested the government's ability to use eminent domain to transfer property from one private owner to another for purposes of economic development. In a razor thin 5-4 decision, the U.S. Supreme Court found that a local government's pursuit of a hoped for economic benefit from the implementation of an urban development plan could constitute sufficient "public use" under the Takings Clause of the Fifth Amendment, despite the fact that properties to be condemned were not blighted.

Kelo arose from the efforts of the City of New London, Connecticut, to take private property to implement its "comprehensive development plan." The comprehensive development plan contemplated the construction of restaurants, retail space, a hotel, a museum, residences, and a pedestrian river walk within a 90-acre area. The City authorized its developer agent to acquire the necessary properties by negotiation or by eminent domain. All but 15 property owners in the development area voluntarily sold their property to the developer agent. Ten of the remaining 15 properties were owner occupied dwellings.

The owners challenged the takings on the basis that the transfer of property from one private party to another for economic purposes could not constitute sufficient public use to justify a taking. However, the Supreme Court of Connecticut held that the city's proposed takings were valid and the U.S. Supreme Court affirmed.

U.S. Supreme Court relied heavily on two cases: *Berman v. Parker,* 348 U.S. 26 (1954) and Hawaii Housing Authority v. Midkiff, 467 U.S. 229 (1984). In *Berman v. Parker,* the Court upheld the use of eminent domain to implement a redevelopment plan even though the subject property was not blighted. In *Hawaii Housing Authority v. Midkiff,* the Court upheld the compelled transfer of fee title from lessors to lessees upon the payment of just compensation in order to reduce the concentration of land ownership. Both of these cases found that a public use could be found even if private parties benefited from the acquisition.

The Court found that the city's determination that the area was sufficiently distressed to justify a program of economic rejuvenation was entitled to deference. The Court further suggested that the uncertainty as to whether the expected economic benefit would actually occur was irrelevant to its analysis.

Ironically, the expected economic benefits identified by the city in *Kelo* never actually occurred. After the Court rendered its decision, the agent developer was unable to attract private funding for the development plan. It is unlikely that the "economic rejuvenation" that was the justification for the take will ever materialize because Pfizer moved its research facility and its 1,400 well-paying jobs, which were touted as the "catalyst to the area's rejuvenation," out of New London after it used up its entire tax break. The city spent over 100 million dollars to acquire the properties with nothing to show for it.

In response to *Kelo*, many states passed new laws providing additional restrictions on the use of eminent domain. In California, for example, Proposition 99 passed in the June 2008 election. It amended the state constitution to prohibit (subject to some exceptions) "state and local governments from using eminent domain to acquire an owner-occupied residence, as defined, for conveyance to a private person or business entity." Perhaps the principal impact of Kelo was that it caused a backlash in public sentiment against the use of the power of condemnation, particularly where there is any appearance of overreaching or abuse. Attorneys for both private parties and public entities are deeply aware of this public sentiment in presenting their cases to juries, remolding themselves and their approaches to better connect with the common spirit.

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