

MONTHLY **Bundle of Writes**

NEWS AND EVENTS FOR IRWA CHAPTER 67

SUMMER 2019

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INSIDE THIS ISSUE

- President's Message
- Editor's Corner & Events
- Education
- Case of the Month
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PRESIDENT'S MESSAGE

Alyson C. Suh Woodruff, Spradlin & Smart asuh@wss-law.com (714) 558 7000

As I write this, I am reminded of how quickly time passes and can hardly believe that my year as President is quickly coming to an end. I was honored to serve as your Chapter 67 President and would like to take a moment to thank the very hard working Board of Directors and Committee Chairpersons for their time, dedication and leadership this past year. We have a remarkable group of folks that will be serving as your Board and Committee members for the 2019-2020 year and they have a lot of exciting things planned. You can't get rid of me that easily though as I will be your next Newsletter/Communication Chair, but fortunately you will be spared from my corny jokes at the monthly luncheons. And speaking of the newsletter, check out our new format. We hope you enjoy it!

Recently, Amanda Fitch (your amazing incoming President) and I were able to spend a few days in Portland at The 65th Annual International Education Conference and got to meet with individuals from not only across the country, but other parts of the world that are involved in right of way. It's fascinating that despite state and international boarders,

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EXECUTIVE BOARD

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Meredith McDonald, Senior **Appraiser** The Kiley Company (714) 655-6515 mmcdonald@thekileyco.com

PAST PRESIDENT

Artemis Manos, SR/WA Southern California Gas Co. (714) 256-1673 agmanos@semprautilities.com there are more than 10,000 members of IRWA who in some manner or another share the same goal of striving to "improve people's quality of life through infrastructure development". If you aren't already involved in IRWA, I would strongly encourage you to do so. We are so fortunate to have available this wonderful organization that allows us to enhance our professional skills through courses and seminars while at the same time networking with colleagues and forming friendships.

Speaking of learning and networking, Chapter 67 is hosting a Summer

Refresh on Tuesday, July 16th. It will be a full-day seminar filled with many distinguished guest speakers presenting on a variety of topics. More information can be found in the newsletter. Registration is limited and time is running out, so if you haven't yet signed up, do so today.

Thank you for your continued support of Chapter 67. On behalf of your outgoing Board of Directors, we wish you a safe and happy summer!



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EDITOR'S CORNER

Gabe Becerra Overland, Pacific & Cutler gbecerra@opcservices.com (949) 872-3237

Welcome back readers to a summer edition of our newsletter. If you would like to contribute content to the newsletter, have questions or any ideas to improve the content please contact me.

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PROFESSIONAL DEVELOPNMENT

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UPCOMING EVENTS

Summer Refresh

Topics Include: Sensational Surveying, Astounding Appraisal, Extraordinary Environmental, Unbelievable Utilities, Terrific Title, Captivating Caltrans, Glorious Goodwill.

DATE/TIME

July 16, 2019 8:00 AM - 5:00 PM

LOCATION

Santa Ana/ Airport Holiday Inn 2726 S. Grand Avenue Santa Ana. CA 92705

See Seminar Flyer at the End of this Newsleetter

Click here to register online

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CASE OF THE MONTH

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TRI-CHAPTER LUNCHEON

Katherine Porter, Esq. Centauri Law Group, P.C. (949) 271-6388 kporter@centaurilaw.com

PIPELINE / UTILITIES TBD

VALUATION TBD



EDUCATION

James Vanden Akker Metropolitan Water District JVandenAkker@mwdh2o.com (213) 217-6324

Welcome back readers for the summer edition of our newsletter. If you any ideas or suggestions for future courses, please contact me.



COURSE 900

Principles of Real Estate Engineering

With the use of lecture, questions and answers, exercise methods and graphic illustrations, participants in this course will learn how to use engineering tools and will gain basic skills in reading and interpreting information contained on engineeringplans. Participants will also learn how to read, understand and plot simple descriptions using the most common methods of property descriptions.

DATE/TIME July 18-19, 2019 8:00 AM - 5:00 PM

LOCATION

County of San Bemardino Workforce Development 658 E. Brier Drive, Suite 100 San Bernardino, CA 92408

SPONSOR

IRWA Chapter 57

<u>Download Course Flyer</u>



COURSE 100

Principles of Land Acquisition

This course outlines real estate law terms and concepts. Participants will gain awareness of environmental issues, learn the methods of acquiring and transferring title to realty, three views of engineering plans and the fundamentals in property description systems. Topics also include the requirements of a valid contract, information on easements, deeds, leases, the appraisal process, successful negotiations, and relocation requirements involved with property acquisition and management.

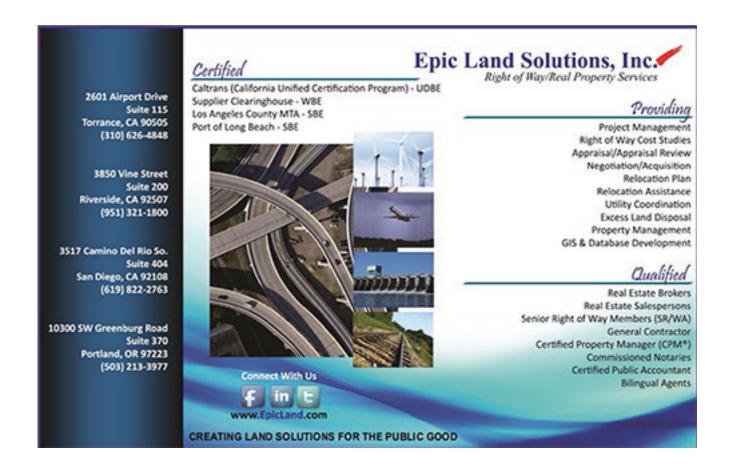
DATE/TIME September 17-18, 2019 8:00 AM - 5:00 PM

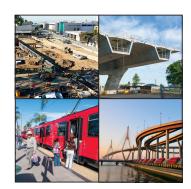
LOCATION

Metropolitan Water District of Southern California 700 N. Alameda St. Los Angeles, CA 90012

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CASE OF THE MONTH

Brad B. Kuhn, Esg., Partner Law Firm of Nossaman LLP bkuhn@nossaman.com

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Many public agencies and utilities have easements for water or gas pipelines or electric transmission lines. Those easements typically contain express rights to construct, operate, and maintain the facilities, including rights of access; but oftentimes the easements are silent on what rights are reserved to the private property owner, including whether the owner can place trees or other improvements within the easement area. As utilities and public agencies are undertaking more thorough efforts to protect and maintain their rights-of-way, they are commonly seeking to remove such trees and improvements. Absent express language in the easement, are such trees or improvements permitted, or can the agency/utility remove them? A recent Court of Appeal decision, Inzana v. Turlock Irrigation District, provides guidance and indicates the easement holder has the right to remove such trees or improvements upon a showing of reasonable interference.

Background

In Inzana, the Turlock Irrigation District acquired an irrigation easement which granted "a right to construct, maintain, operate, and replace a pipeline and related structures," including "the right to ingress and egress . . . for the purpose of operation, maintaining, repairing, and keeping the pipeline and related structures in operating condition." The

property owner subsequently planted pistachio trees within the easement area



Years later, relying on its own newly enacted internal rules prohibiting the placement of trees or other improvements within its easements, the District demanded that the property owner remove the pistachio trees, as growing tree roots could eventually impact the pipeline's integrity, causing it to crack and leading to flooding. The District stated that if the owner refused to comply, the District would remove the trees, and the District also threatened to terminate water delivery to the owner's property. The owner filed a lawsuit challenging the District's removal demand, claiming (i) the easement does not give the District the right to remove the trees, (ii) the District's internal rules were not part of the easement and therefore could not be relied upon, and (iii) if the District removed the trees it would be liable for inverse condemnation for taking private property without paying just compensation. The owner also sought to prevent the District from terminating water service to the property.

Trial Court Decision

The trial court held that the planting of trees denied the District the right of ingress and egress, and therefore interfered with the District's easement. The court further held that the District had the right to restrict water delivery to the property.

The Appeal

The Court of Appeal agreed. The Court provided a general background on easement rights, explaining:

"The rights and duties between the owner of an easement and the owner of the servient tenement . . . are correlative. Each is required to respect the rights of the other. Neither party can conduct activities or place obstructions on the property that unreasonably interfere with the other party's use of the property. In this respect, there are no absolute rules of conduct. The responsibility of each party to the other and the "reasonableness" of use of the property depends on the nature of the easement, its method of creation, and the facts and circumstances surrounding the transaction."

The Court further explained:

"la property owner is entitled to make all uses of the land that are not prohibited by the servitude and that do not interfere unreasonably with the uses authorized by the easement. . . . Actions that make it more difficult to use an easement, that interfere with the ability to maintain and repair improvements built for its enjoyment, or that increase the risks attendant on exercise of rights created by the easement are prohibited In determining whether the holder of the servient estate has unreasonably interfered with exercise of an easement, the interests of the parties must be balanced to strike a reasonable accommodation that maximizes overall utility to the extent consistent with effectuating the purpose of the easement "

Applied to this situation, the Court explained that the evidence showed that the trees interfered with the District's ability to maintain and repair the pipeline; and could eventually

cause a maintenance issue or damage the pipeline. As a result, the District could require the removal of the trees pursuant to its easement rights, and it would not be liable for a taking.

With respect to the District's termination of water delivery to the property, the Court explained that irrigation districts are statutorily granted the power to create equitable rules for the distribution and use of water, and a district's ability to enforce rules by terminating water delivery is a tool in providing for the orderly distribution of irrigation water. The court therefore held that there is nothing inequitable in refusing to deliver water to landowners who refuse to comply with the district's rules.

Conclusion

The Inzana decision is an important reminder for public agencies and utilities that their typical pipeline or transmission line easements include the right to prevent the placement of trees (or other improvements) within their easements to the extent

such improvements interfere with the ability to access, maintain, operate, or repair the facilities; express easement language on this topic is not necessarily required. The decision is also important for property owners, as they need to understand that in granting easement rights on their property, there is a likelihood that their remaining use of the easement area can be significantly limited, even if not expressly called out in the easement document.













Attorneys You Can Count On

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JAMES VANDEN AKKER RECEIVES SR/WA

In September 2018, Mr. James Vanden Akker was approved as a Senior Right of Way Professional (SR/WA) from IRWA. We want to commend James for his pursuit of further education and dedication to the SR/WA program.

James was required to complete 208 credit units plus an ethics course and examination in order to complete the requirements. James started his candidacy in May 2016 and completed all the course work and exams up to this past September. He did a terrific job and worked very hard for the last 2 ½ years.

James works as a Real Estate Representative II for the Metropolitan Water District of Southern California (MWD). He works in the Planning and Acquisition department acquiring easements and fee property for MWD's pipeline infrastructure. Prior to employment with MWD, he worked for OPC Services and Paragon Partners, Right of Way consultants.

Born in Bellflower, California on April 1st (yes, James has heard all the jokes!), making him an "Aries", who is very specific, grand, and demanding, but very giving with those who are close to him.





James received his B.A. from California State University Fullerton, making him a "Titan" alumnus, which also breeds skillful Major League Baseball (MLB) players. He has been married to Kevin since November 2015 and they reside in Rancho Santa Margarita.

James pretty much enjoys all kinds of cuisines and likes reading, music, and nice restaurants. He is also a writer and has even published some essays and short stories. As far as his tastes in music, James enjoys singer/songwriter fare, the sort we used to call folk.

The last book James read was the novel "Life Drawing" by Robin Black (which he describes as "completely shattering") and his last movie taken in was "A Star is Born". James loves dining and some of his favorite restaurants include Bobby Van's in New York, Uncle Bo's in Hawaii, and the Blind Pig and Pizze E Vino in Rancho Santa Margarita.

When James wants to veg out, his favorite shows are "The Golden Girls" "Six Feet Under" and

any of the true crime programs. Such a variety, James! James is filled with all kinds of favorite quotes but his latest is from Dr. Seuss and it is "You know you're in love when you can't fall asleep because reality is finally better than your dreams!".

One of James's pet peeves is people who are not courteous and who display poor manners. If there's one thing James has learned in life, it's that "Fear" can be a great motivator!

James's last vacation was a trip to New York and he really loved it! What James looks for in people is mainly honesty and friendliness. A recent accomplishment was pursuing and securing his current job at MWD and his most important unrealized goal is to write and publish a book.

When asked why he is involved in IRWA, James stated "My first job in the industry insisted I join, then I found out quickly how valuable and educational the organization is". Next time you see James at a luncheon, say "Hi James and congrats on your SR/WA!"



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International Luncheon featuring speakers from Canada, Mexico (right), South Africa, (left), Nigeria and Saudi Arabia.



In memory of the 3 IRWA Members



2019 Summer "Refresh" Seminar

DATE: July 16, 2019

Registration will begin at 7:45 am

Location: Santa Ana/ Airport Holiday Inn

2726 S. Grand Avenue, Santa Ana, CA 92705

REGISTRATION

sponsorships

Chapter 67's full day seminar on July 16, 2019

Includes course material, continental breakfast, lunch & afternoon snack

Morning Session

Environmental Reports: How to Limit Risk Ann Johnston, Psomas & Steve Figgins, EKI Environment & Water, Inc.

The 1.5 Billion Acre Subdivision Project: An Explanation of Legal Descriptions Jeremy Evans, Psomas

Understanding the Appraisal Process - Matthew VanEck, Kidder Matthews

The Price is NOT Right: Examining the Offer Process Chip Willett, Bender Rosenthal Inc.

Lunch Speakers

The Caltrans Right Of Way Certification Process Evy Washington & Ricky Rodriguez, Caltrans District 12

Afternoon Session

Damages: An Appraiser & Attorney Discussion Rick Friess, Esq., Allen Matkins & William Thomsen, Grobstein Teeple, LLP

Title Insurance or Title Opinion: Before you Plot a Course, Figure out where you want to go! Jack Quirk, Esq., Bright & Brown & Lawrence "Larry" Lacombe, Vice President, Western Region Underwriters

Construction Plans & Specs Darrell Hartman, PE & Uyenly Bui, PE, City of Irvine

This seminar is pending MCLE, BREA and IRWA Continuing Education Credits

| Name: | |
|--------------------------------|--|
| Company/Agency: | |
| Address: | |
| City, State, Zip Code: | |
| Phone: | |
| Email: | |
| Number of attendees: @\$125.00 | |
| Total Enclosed: | |

Registration forms are due no later than July 9, 2019

Please make checks payable to: IRWA Chapter 67 and send to:

Amanda Fitch c/o Mobilitie, LLC 2955 Red Hill Ave., Suite 200 Costa Mesa, CA 92626 Email: afitch@mobilitie.com

Limited Space, sign up now!

Credit Card Payment available!
Sign up on line at:
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2019 Summer "Refresh" Seminar

DATE: July 16, 2019

Registration will begin at 7:45 am

Location: Santa Ana/ Airport Holiday Inn

2726 S. Grand Avenue, Santa Ana, CA 92705

SCHEDULE

| 7:00 AM - 8:00 AM | Registration and Continental Breakfast |
|----------------------------------|-----------------------------------------------------------------------------------------------------|
| 8:00 AM - 8:15 AM | Opening Remarks |
| 8:15 AM - 9:15 AM | Environmental Reports: How to Limit Risk |
| 0.15 1111 7.15 1111 | Ann Johnston, Vice President/Principal, Resource Management, Psomas & Steven Figgins, Prin- |
| | cipal, EKI Environment & Water, Inc. |
| 9:15 AM - 10:00 AM | "The 1.5 Billion Acre Subdivision Project": An Explanation of Legal Descriptions |
| | Jeremy Evans, Technical Director, Land Surveying & Mapping, Psomas |
| 10:00 AM - 10:15 AM | Break |
| 10:15 AM - 11:15 AM | Understanding the Appraisal Process |
| | Mat <mark>thew Van E</mark> ck, Sen <mark>ior Vice</mark> President, Kidder Matt <mark>hews</mark> |
| 11: <mark>15 AM - 12:00PM</mark> | The Price is NOT Right: Examining the Offer Process |
| | Ch <mark>ip Willett, R</mark> egiona <mark>l Manager, Bender Rosen</mark> thal I <mark>nc.</mark> |
| 12:00 PM - 1:15PM | Lu <mark>nch & Lea</mark> rn: The Caltrans Right of Way Certification Process |
| | Eva <mark>ngelina (Evy) Washington, Branch Chie</mark> f, R/W Planning & Management, Caltrans |
| | District 12 & Ricky Rodriguez |
| 1:15 PM - 2:30 PM | Damages: An Appraiser & Attorney Discussion |
| | K Erik (Rick) Friess, Partner, Allen Matkins, & William W. Thomsen, Director, Grobstein Teeple, LLC |
| 2:30 PM - 3:30 PM | "Title Insurance or Title Opinion: Before You Plot a Course, Figure Out Where You Want to Go!" |
| | Jack Quirk, Esq., Bright & Brown & Lawrence "Larry" Lacombe, Vice President, Western |
| | Region Underwriters |
| 3:30 PM - 3:45 PM | Break |
| 3:45 PM – 4:30 PM | Constr <mark>uction Plans & Specs/ Utilities Relocation</mark> |
| | Darrel Hartman, PE & Uyenly B <mark>ui, PE</mark> , Senior Civil Engineers, City of Irvine |
| 4:45 PM | Closing Remarks |

This Seminar is eligible for MCLE, BREA and IRWA Continuing Education Credits.

Cost: \$125.00 [Includes continental breakfast, lunch and mid-afternoon refreshments]

Contact: Amanda Fitch, afitch@mobilitie.com