IRWA
ORANGE COUNTY
CHAPTER 67

AWARD WINNING
★★ NEWSLETTER ★★

MONTHLY
Bundle of Writes
NEWS AND EVENTS FOR IRWA CHAPTER 67

MARCH 2024

INSIDE THIS ISSUE

PRESIDENT'S MESSAGE

Matthew VanEck, MAI
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I hope that you all enjoyed the holiday season and are having a great start to 2024. IRWA Chapter 67 has had an active last couple of months. Here are some highlights:

On November 14th, Jennifer Medina with SoCalGas, presented on the Hydrogen Home Project and the company's other hydrogen related infrastructure projects throughout the region. Ms. Medina discussed SoCalGas' goal of achieving net zero greenhouse gas emissions in its operation and delivery of energy by 2045 and the projects they are implementing to reaching that goal.

In December, we hosted the 2023 Tri-Chapter Luncheon at the Richard Nixon Presidential Library & Museum. It was the first Tri-Chapter event since 2019 and we sold out all of our available tickets. Our guest speaker was IRWA International President Fred Easton, Jr., PLS, SR/WA, R/W-AMC who spoke about giving back, how he chose to become involved in the right of way association, and an interesting life experience as a surveyor.

PRESIDENT

Rudy Romo, SR/WA, was acknowledged with the Tri-Chapter Award for service for his commitment to IRWA as past president of Chapters 1, 57 and 67 (twice), as well as his numerous other roles in each of our local chapters. Thanks to our event sponsors and raffle donors, the chapter was able to turn a profit on the event which will help us continue to provide services to our members. Finally, the event could not have been possible without our Tri-Chapter Committee Chair, Nazani Temourian, Esq. and our committee members who volunteered their time and support.

We held our first luncheon of 2024 on January 9th with guest speaker, John Ellis, MAI, CRE, FRICS of CBRE who presented on "Real Estate Markets and the Economy: Seeking Clarity at a Time of Uncertainty". It was Mr. Ellis' 14th time presenting in front of Chapter 67. He discussed macro and micro economic trends, as well as a couple projections to keep an eye out over the next year. Thank you John for your continued support of our chapter.

Looking ahead to the remaining 2023-2024 IRWA year, we have our next in person luncheon on March 12th. Our guest speaker will be BJ Swanner, Senior Project Manager and Director with Monument. The title of Mr. Swanner's presentation is Big Projects, Big Data: Geographic Information Systems as a critical collaboration tool for design, planning, and right-of-way analysis for major infrastructure projects. Also, IRWA will hold its annual International Education Conference from Sunday, June 23, 2024 to Wednesday, June 26, 2024 in Long Beach, CA. Our friends at IRWA Chapter 1 are the hosts of the conference and are looking for volunteers to help with the event. I will be signing up and hope to see you there. Volunteers can register on IRWA's website, or reach out to our chapter's representative on the planning committee, Rudy Romo (RRomo@cityofirvine.org).

Chapter elections for the 2024-2025 IRWA year are also coming up in the next few months. If you would like to submit your name for consideration for a chapter officer or committee chair role, please reach out to our Nominations & Elections Committee Chair, Joe Munsey, RPL (jmunsey@socalgas.com / 949-361-8036).

It was great to see so many of you at these past chapter events. I hope you all have a wonderful start to 2024.

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

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UPCOMING EVENTS

March Monthly Luncheon

Tuesday March 12, 2024 12:00 p.m.
Speaker: BJ Swanner, Senior Project Manager and Director with Monument.
Topic: Big Projects, Big Data: Geographic Information Systems as a critical collaboration tool for design, planning, and right-of-way analysis for major infrastructure projects.

LinkedIn

Chapter 67 Is now on LinkedIn!
Please join us. here.

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MARCH LUNCHEON

BJ Swanner

Senior Project Manager/Director Monument

Big Projects, Big Data. Geographic Information Systems as a critical collaboration tool for design, planning, and right-of-way analysis for major infrastructure projects.

Planning for major capital improvement projects can often begin years, or even decades before construction commences. Throughout the planning, design, and environmental review process, right-of way professionals are called upon to help analyze the need for additional property and rights to construct projects, and to estimate costs to obtain those rights. For regional scale "mega projects", affected properties can number in the dozens to hundreds (or more) requiring detailed studies of the impact to properties and displaced uses.

To provide the information necessary to evaluate right-of-way impacts as part of the overall design and environmental process, right-of-way professionals have begun to adopt new technologies, allowing them to readily exchange critical data with engineers, planners, oversight agencies, local agency stakeholders, and the public. The use of Geographic Information Systems (GIS) specifically has paved the way for unprecedented collaboration among these project partners and enabled right-of-way professionals to provide meaningful insights to the project development process that can help minimize unnecessary impacts to existing infrastructure.

In addition to helping identify right-of-way requirements and minimizing impacts, GIS has helped analysts develop estimates of the likely cost to obtain property and rights early in the project development process. Especially in regions where real estate can be a significant portion of the overall project cost, these estimates have proven invaluable for assessing overall project feasibility, applying for funding, and programming funding for future project phases.

This presentation will provide insights into the adoption of GIS technology by right-of-way professionals and provide examples of integrating the technology into the planning process for large infrastructure projects. The presentation will highlight some of the advantages to using GIS as part of the planning process, discuss some of the challenges to implementing these systems, and discuss other considerations for teams who may wish to adopt this technology for their projects.

Please Join Us

Tuesday, March 12, 2024 at 12:00 PM

Holiday Inn - Santa Ana/OC ARPT

2726 S Grand Ave, Santa Ana, CA 92705

RSVP HERE

EDUCATION

EDUCATION

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For questions regarding IRWA education, whether it be information on a particular course, how to register, potential upcoming courses, or the credentialing program, please reach out to James.

IRWA's Virtual Classroom

IRWA's virtual classes let you engage in courses delivered in real-time from your desk., home or anywhere with an internet connection. Through an easy-to-use digital platform, IRWA instructors facilitate live interactive courses, creating a classroom experience in a virtual environment.

Course 145: Overview of the Uniform Act Requirements
March 7, 2024

This course offers a general understanding of the Uniform Act to avoid the possible loss of federal funding on projects.

*This course is an elective for the SR/WA designation as part of the IRWA's Right of Way Certification Program.

INSTRUCTOR:
Lee Hamre, SR/WA, R/W-RAC, R/W-RAC has worked in right of way since 1992, and has served as President and CEO at H.C. Peck and Associates, Inc. since 2003. During this time, she has provided comprehensive acquisition, relocation assistance and real estate project management services under the Uniform Act for transportation, affordable housing/community development and GSA projects throughout the U.S. Since 2004, Lee has acted as Real Estate Project Management Oversight Specialist for FTA funded projects nationwide providing technical assistance and ongoing review of projects' regulatory compliance. Lee is a CLIMB certified instructor for all International Right of Way Association's (IRWA) relocation courses and was the recipient of IRWA's Frank C. Balfour Professional of the Year Award in 2006. She also served as IRWA's International President from 2014-2015.

REGISTER HERE

UPCOMING COURSES

Check Out

IRWA's Newest Course Offerings!

Course 145: Overview of the Uniform Act Requirements (4 hours) offers a general understanding of the Uniform Act to avoid the possible loss of federal funding on projects.

*This course is an elective for the SR/WA designation as part of the IRWA's Right of Way Certification Program.

Upcoming Course 145 Offerings

(Virtual Class) March 7, 2024 | Chapter 67
Learn more!

(Virtual Class) July 22, 2024
Learn more!

Course 219: Adult Communication Principles and Methods (2 days) is IRWA's premier communication skills course, which will help you in any difficult situation you may encounter, including communicating and negotiating with landowners.

*This course is a requirement for the RWP certification as part of the IRWA's Professional Right of Way Certification Program.

Upcoming Course 219 Offerings

(In-Person Class) February 8-9, 2024 | Greenwood Village, CO
Learn more!

(In-Person Class) February 13-14, 2024 | Downey, CA
Learn more!

(In-Person Class) March 7-8, 2024 | Reno, NV
Learn more!

(In-Person Class) March 25-26, 2024 | Everett, WA
Learn more!

EDUCATION

IRWA
BUILDING A BETTER WORLD TOGETHER®

2024 EDUCATION CONFERENCE

The 2024 Conference Planning Committee is excited to welcome you to Long Beach, California, from June 23 to 26, 2024, for the 70th Annual International Education Conference! Plans are in motion to bring you a dynamic and educational event with some exciting additions.

Register by March 22, 2024 to secure the early rates. For more information on pricing and what's included each day at conference, check out the link below.

REGISTER NOW!

IRWA
California Inland Empire
Chapter 57

Volunteers Needed!
Calling all volunteers for the
2024 Annual International Education Conference in Long Beach!

The Conference Committee is in need of volunteers to assist with setup, breakdown, registration, hospitality, and other roles.

See the Link Below for Volunteer Registration

VOLUNTEER HERE!

CHAPTER 67 2024 OFFICER CANDIDATES

CHAPTER 67's OFFICER CANDIDATES FOR 2024-2025 TERM
Joe Munsey, RPL, Nominations Chair

Mathhew VanEck, MAI, Senior Vice President, Kidder Mathews Valuation & Advisory Services, appointed Joe Munsey, RPL, Senior Land Advisor, Southern California Gas Company, as Chair of the Nominations Committee.

We will be electing Chapter Officers at our May 14, 2024, luncheon. Further nominations from the floor will also be accepted at the May meeting.

Feel free to contact Joe Munsey at jmunsey@socalgas.com or 949-361-8036 to offer additional nominee(s) as a Chapter officer(s) by April 30th.

Per Article IV, Section 2, "At the expiration of the term of the President, the President-Elect shall succeed to the office of the President for a one-year term." Jillian Friess Leivas, Esq., Associate, Nossaman LLC, is the current President- Elect and will succeed as Chapter President.

The Chapter will be electing the following officers:

- President-Elect
- Treasurer
- Secretary
- International Director – 2-year term

Nominees are:

Officer	Nominee
President	Jillian Friess Leivas, Esq., Associate, Nossaman LLC Per Article IV, Section 2, "At the expiration of the term of the President, the President-Elect shall succeed to the office of the President for a one-year term."
President-Elect	Lara Boyko, JD, RWP-GN, Principal Consultant, ERM
Secretary	Jacinto Munoz, MAI, SRA, AI-GRS, AI-GRS, Managing Director/Principal, Cogito Realty Partners LLC
Treasurer	Dwayne Ozenne, JD, Land Advisor, Southern California Gas Company
International Director - 2 year term	Lara Boyko, JD, RWP-GN, Principal Consultant, ERM

CASE OF THE MONTH

DEVELOPMENT FEES AND EXACTIONS: U.S. SUPREME COURT TO DECIDE IF CALIFORNIA COURTS CAN "EXEMPT" SOME DEVELOPMENT FEES FROM THE REQUIREMENT THAT FEES MUST BE SHOWN TO BE AT LEAST "ROUGHLY PROPORTIONAL" TO THE PUBLIC COSTS OF MITIGATING THE IMPACTS OF NEW DEVELOPMENT

January 2024

By: David Lanferman & Scott Copper

On Tuesday morning, January 9, 2024, the United States Supreme Court heard oral arguments in a case that could become a major game-changer in the way that development fees and exactions are calculated, imposed, and judicially-reviewed in California and several other states. The case is "***George Sheetz v. County of El Dorado, California.***" The Court is expected to decide whether the California courts erred by exempting certain ("legislatively-established") development fees from *Dolan's* constitutional requirement that the government show that the amounts of its fees are at least "roughly proportional" to the costs mitigating development impacts. The *Sheetz* case has been described as "the most important Supreme Court land use case to come out of California since the Court decided both the *Nollan* and *First English* cases in 1987."

Background – Constitutional Requirements for Development Exactions and Fees:

In 1987, in *Nollan v California Coastal Commission,* the U.S. Supreme Court reversed a California state court decision, and held that governments must show that there is a reasonable "nexus" between their exactions of property and the alleged impacts of the proposed development in order for the exaction to be deemed valid as a matter of federal constitutional law, under the doctrine prohibiting unconstitutional conditions.

In 1994, the Supreme Court further clarified the constitutional standards applicable to exactions demanded as conditions of development approval, in *Dolan v. City of Tigard, Oregon*. The Court held that the government has the burden prove two facts: (1) that there is a reasonable nexus between the exaction and the impacts of the project; and (2) that the amount of the exaction is at least "reasonably proportional" to the costs of addressing the alleged impacts of the project. In 1996, the California Supreme Court held that the *Dolan* "rough proportionality" requirement is applicable to demands for money (i.e., development impact fees) as well as exactions of property – at least where the fees are imposed "administratively" in a project-specific permit context, purportedly based on a "distinction" from fees that have been "legislatively-established." (E*hrlich v. City of Culver City*).

For 30 years, there has been confusion and inconsistency in the lower courts nationwide as to whether or not development fees that are characterized as "legislatively-established" may be "exempt" from *Dolan's* constitutional rough proportionality requirement. Many states have rejected the idea of such a double-standard for development fees. However, the California courts largely adopted the notion that "generally-applicable, legislatively-established" development fees are not subject to *Dolan's* requirement that fees be roughly proportional to impacts of new development – as in *Sheetz*. As a result, development fees in California have not been subject to the constraints on the amounts exacted that are applied elsewhere in the country. Many observers have concluded that this is a major factor in the extraordinarily high fees prevailing in California, and the high cost of housing.

Facts of the *Sheetz* case: In 2006, the County of El Dorado's Board of Supervisors "legislatively-adopted" a General Plan that included a traffic impact mitigation fee program, requiring new development to pay specified fees pursuant to a schedule for road improvements. The amount of the fees on the schedule is generally based on the location of the project (i.e., the specific geographic zone within the County), and the type of project (e.g., single-family residential, multifamily residential general commercial). The record indicated that the County had "allocated" the estimated costs of those improvements so that new development would pay a disproportionally-high share of those costs, without regard to the cost specifically attributable to the particular project on which the fee is imposed. The County "administratively" imposes the fee on a specific permit application based on the schedule, without any "individualized determinations" as to the nature and extent of the traffic impacts caused by a particular project on state and local roads.

George Sheetz applied to the County for a permit to build a modest 1800 SF manufactured house on his residentially-zoned property in Placerville. The County demanded $23,400 in traffic-mitigation fees as a condition of issuing the permit. Sheetz paid the fee under protest and sued in state court to challenge the validity of the fee under both the Mitigation Fee Act and the takings clause of the United States Constitution, namely the special application of the "unconstitutional conditions doctrine" as explained in Nollan and Dolan.

The California Courts' Decisions: The trial court denied all relief to Mr. Sheetz, based in part on its conclusion that the traffic-mitigation fee was not subject to the requirements of *Nollan* and *Dolan* because of its reliance on a purported "California rule" that "exempted" a legislatively prescribed development fee that is generally applicable to a broad class of property owners from those requirements.

The California Court of Appeal affirmed the denial of all relief to Mr. Sheetz, again because it felt bound by a purported "California rule" that applies a double standard and holds that "generally-applicable development fees are not subject to the *Nollan/Dolan* test." The California Supreme court denied review of that decision.

The Road to the U.S. Supreme Court: Mr. Sheetz petitioned for the U.S. Supreme Court to review this case. **Rutan & Tucker** was requested to represent the National Association of Home Builders and the California Building Industry Association, as 'friends of the Court,' and to submit briefing in support of Mr. Sheetz' petition. The Court granted the petition on September 29, 2023, one of only about 80 cases the Court agrees to review each year. Rutan & Tucker again filed 'friend of the court' briefing on the merits, on behalf of NAHB and CBIA, in advance of the recent Oral Arguments in the Court. The Court's decision is expected before July.

Possible Significance? IF the Court reverses the decision of the California courts, it is expected that California local governments will continue to be able to establish and impose development fees, but subject to more transparency as to the amounts of fees charged, with more opportunity for fee-payers to question the amounts of fees or exactions imposed.

For more information, please contact Dave Lanferman, Doug Dennington, Jayson Parsons or Scott Cooper at Rutan & Tucker.

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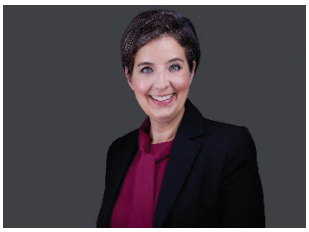
1 No. 22-1074, Sept. 29, 2023 (case below Sheetz v. County of El Dorado,84 Cal.App.5th 394 (Cal.App.3rd Dist. 2022).

ARTICLE

ESG Deception or Overreach – Understanding the Landscape of Greenwashing Litigation

Molly Pela, Esq., Partner
Andrew Good, Esq., Partner
Oliva Gibbs LLP

Oliva Gibbs serves oil and gas companies across the country from offices in Columbus, Houston, Lafayette, Midland, and Oklahoma City. We advise a wide range of clients — from Fortune 500, integrated oil and gas companies to private equity backed startups and mineral rights companies. Oliva Gibbs' attorneys are licensed in 13 states, including Arkansas, Colorado, Louisiana, Montana, New Mexico, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, Texas, West Virginia and Wyoming.



In addition to the risk of regulatory enforcement actions and penalties, the court system continues to be used as a battleground for climate issues through litigation against oil and gas ("O&G") companies.[1] "As of December 2022, there have been 2,180 climate-related cases filed in 65 jurisdictions, including international and regional courts, tribunals, quasi-judicial bodies, or other adjudicatory bodies, such as Special Procedures at the United Nations and arbitration tribunals."[2] These lawsuits have been brought by state and local governments, environmental groups, indigenous people, climate change protestors, citizen groups, and others that seek to hold energy companies liable for climate-related damages.[3] Some, however, view these as political tactics that intend to harm domestic energy production and use, thereby increasing energy costs.[4]

The first legal strategy relating to climate change was brought forth by the Global Warming Legal Action Project ("GWLAP") in 2001,[5] which included four goals: (1) develop and apply a tort law approach to global warming that will require green house gas emitters and fossil fuel companies to internalize the costs of their contributions to global warming; (2) serve as a forum for sharing strategy and ideas with attorneys nationwide and worldwide who are seeking to use legal action to promote progress on reducing global warming; (3) educate members of the bar and the public regarding the industry's potential liability for global warming injuries by participating in legal symposia, publication of articles and similar activities; and (4) understand additional legal work that will further the Civil Society Institute's mission of combating global warming and promoting clean energy solutions. Thereafter, the GWLAP joined attorney generals from multiple states to file an initial tort case against American Electric Power, which ultimately was appealed to the U.S. Supreme Court.[6] The Court, in an 8-0 decision, held that corporations cannot be sued for greenhouse gas emissions (GHGs) under federal common law, primarily because the Clean Air Act delegates the management of carbon dioxide and other GHG emissions to the Environmental Protection Agency (EPA).

Since such time, there has been a massive uptick in climate-related litigation as a result of environmental, social, and governance (collectively "ESG") issues having become a major focal point for a large number of politicians, public and private corporations, and citizens in general. These cases attempt to force liability through alignment to current laws and regulations, climate attribution science, public mobilization efforts, and broad allegations relating to alleged ESG deception efforts, which include "greencrowding," [7] "greenlighting," [8] "greenshifting," [9] "greenlabeling," [10] "greenrinsing," [11] or "greenhushing." [12] As such, there are more stringent and sophisticated ESG-related policies and regulations, along with an increased concentration on ESG practices and disclosures of information. With a wider pool of litigants, and more avenues for those litigants to pursue, O&G companies need to make sure they have consistent and compliant ESG-related knowledge and corresponding capabilities to defend against such claims, which can carry significant reputational, regulatory, and/or financial consequences.

One type of claim that has been gaining momentum involves allegations of "greenwashing," which is a term associated with the act of making false or misleading statements about products or ESG practices to appeal to consumer interest through (claimed) eco-friendly products and/or sustainable practices. The causes of action vary by state, but can include claims of public nuisance,[13] private nuisance,[14] trespass,[15] negligence,[16] strict liability,[17] civil conspiracy,[18] unjust enrichment,[19] unfair and deceptive practices,[20] and shareholder litigation.[21] These causes of action typically involve, amongst others, challenges against O&G companies' alleged misleading, misrepresented, and/or omitted disclosures about: (1) governmental or corporate commitments; (2) climate investments, financial risks, and corresponding harms; (3) efforts to downplay the effect of fossil fuel usage on climate change; (4) the effects of fossil fuel products to consumers; and/or (5) the level of investment in cleaner energy sources.[22]

While oil and gas companies have strategically attempted to either dismiss pending lawsuits in their early stages or sought to remove them to federal courts, plaintiffs have successfully discovered how to bring greenwashing lawsuits against O&G companies in their preferred forum (i.e. state courts) and survive dismissal. Additionally, the Federal Trade Commission has pursued greenwashing litigation against companies for purportedly deceptive environmental claims.[23] Similarly, the Securities and Exchange Commission ("SEC") launched its Enforcement Task Force focused on Climate and ESG issues in 2021, with the goal of developing initiatives to identify ESG-related misconduct and focusing initially on greenwashing actions or omissions. Thus, it is apparent that companies need to be increasingly prepared to face litigation and implement strategies to avoid or mitigate significant regulatory, reputational, and financial harms.

So, how can companies in the petrochemicals sector prepare for and/or mitigate risk against greenwashing claims or lawsuits? By taking a proactive approach and focusing on its principles, practices, governance, and disclosures concerning the eco-sustainability of its activities, products, and transactions. For example, O&G companies should:

- Fully understand that greenwashing is about false or misleading practices concerning ESG credentials, products, or practices, which carries significant regulatory, reputational, and financial risks.
- Stay up-to-date on ESG-related developments, including greenwashing, to ensure they can adapt to and comply with governmental policies, rules, and regulations.
- Evaluate their compliance with the most current FTC Green Guides.[24]
- Have internal policies and procedures that provide guidance on potential risks and mitigation associated with greenwashing, while accounting for current (and potentially future) legislation, rules, and regulations.
- Confirm that company practices, statements, and corporate documents match environmental claims/disclosures.
- Use accurate, logical, and verifiable representations or disclosures, including the explanation of evidence-based information and terms that are related to ESG issues or practices.

- Analyze whether their use of words, images, colors, or other descriptors can be considered an environmental claim.
- Examine external claims about company practices and products to confirm they are not misleading, but are justifiable and evidence based.
- Measure what ESG-related commitments and claims are achievable through timely planning and execution.
- Identify and cure any discrepancies between what is disclosed versus what is done in any ESG claim or disclosure.
- Use third parties to verify any ESG-related claims or disclosures, including having legal counsel review disclosures or ESG-related claims.
- Manage and retain all data necessary to defend against environmental claims.
- Use disclaimers, qualifications, or other explanations to mitigate the risk of inaccurate or misleading claims.
- Analyze and evaluate ESG-related compliance and due diligence obligations as required by law.

It is a good idea for all companies that are concerned about the possibility of greenwashing lawsuits to take a comprehensive look at their principles, practices, governance, and disclosures in comparison to the continuously developing statutes, regulations, and case law so that they can confirm there is evidentiary support for company ESG activities and statements. Remember, the best defenses to greenwashing claims will be found in a company's principles, practices, due diligence, and disclosures, along with the ESG-profile for its product, activity, or transaction.

Ms. Pela can be reached at mpela@oglawyers.com
Mr. Good can be reached at agood@oglawyers.com

[1] http://climatecasechart.com/search/?fwp_filing_year=2020%2C2021%2C2022%2C2023

[2] https://www.unep.org/resources/report/global-climate-litigation-report-2023-status-review

[3] http://climatecasechart.com/search/?fwp_filing_year=2020%2C2021%2C2022%2C2023

[4] Kirk Herbertson, "Oil Companies vs. Citizens: The Battle Begins Over Who Will Pay Climate Costs," EarthRights, March 21, 2018, https://earthrights.org/blog/oil-companies-vs-citizens-battle-begins-will-pay-climate-costs/.

[5] https://web.archive.org/web/20131117012507/http:/www.civilsocietyinstitute.org/global_warm_action.cfm

[6] *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410

[7] i.e. hiding in a group while moving at the speed of the slowest adopter of sustainability policies.

[8] i.e. when a company highlights a specific "green" feature of its products or activities.

[9] i.e. implying that the consumer is at fault and shifting the blame to the consumer.

[10] i.e. where marketing calls something sustainable or green, but that is ultimately misleading.

[11] i.e. when a company regularly changes its ESG targets or policies before they are achieved.

[12] i.e. when a company deliberately chooses to under-report/disclose or hide its ESG credentials from public view.

[13] i.e. an act or omission that interferes with the rights of the community or public generally. For example, a claim that defendants' production and promotion of fossil fuels contributed, and continues to contribute, to global warming-induced impacts and that these impacts create a public nuisance interfering with the rights of the communities represented.

[14] i.e. interferes with an individual's enjoyment of his/her property

[15] i.e. interferes with an individual's enjoyment of his property through a physical invasion of the property.

[16] i.e. OG companies owe a duty of care in relation to climate change, claiming that but for the emissions of said company, they would not have suffered the particular, measurable harm.

[17] i.e. hold companies liable for defective products and for failure to warn of the risks associated with their use, where instead of alleging fault they claim strict liability for flaws or errors in a product's design that render it inherently dangerous.

[18] i.e. plotting with another person to commit an unlawful act or to conspire to deprive a third party of a legal right.

[19] i.e. a doctrine that prohibits the unjust enrichment of one person at another's expense.

[20] i.e. engaging in deceptive marketing and promotion of products by, inter alia, disseminating misleading marketing materials and publications refuting the scientific knowledge generally accepted at that time, advancing pseudo-scientific theories of their own and developing public relations materials that prevented reasonable consumers from recognizing the risk that fossil fuels would cause climate change

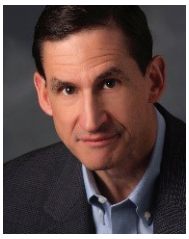
[21] i.e. typically arguing that (1) the lack of knowledge about climate risks undermines shareholders' ability to exercise their rights and/or that (2) the company's misleading use of knowledge has harmed their interests as shareholders.

[22] *See*: *City of New York v. Exxon Mobil Corp.*, which alleges oil and gas companies systematically and intentionally mislead consumers about their products' role in causing climate change; *Vermont v. Exxon Mobil Corp.,* which is a consumer protection lawsuit brought by the State of Vermont against fossil fuel companies alleging deceptive and unfair business practices in connection with the companies' sale of their products; *District of Columbia v. Exxon Mobil Corp.,* which alleges oil and gas companies violated Consumer Protection Procedures Act by misleading consumers about "the central role their products play in causing climate change;" *City of Hoboken v. Exxon Mobil Corp.,* which seeks to recover climate change-related damages allegedly resulting from the defendant energy companies' production of fossil fuels and concealment of fossil fuels' harms; *Delaware v. BP America, Inc.,* which seeks to hold the fossil fuel industry liable for the physical, environmental, social, and economic consequences of climate change in Delaware; *City & County of Honolulu v. Sunoco LP,* which seeks damages and other relief from fossil fuel companies for alleged conduct that the City and County of Honolulu contends actually and proximately caused climate change impacts; and *Rhode Island v. Shell Oil Products Co.*, which seeks to hold fossil fuel companies liable for causing climate change impacts that adversely affect Rhode Island and jeopardize State-owned or -operated facilities, real property, and other assets.

[23] See, *U.S. v. Walmart, Inc.*, No. 22-cv-965, Dkt. No. 3 (D.D.C. Apr. 8, 2022).

[24] https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguides.pdf

ARTICLE



California Aims to Force Adoption of Electric Trucks, But 19 States Sue to Block

By Steve Goreham, MS, MBA

Originally in Master Resource [masterresource.org.]

Ed. Note: Mr. Goreham is the Executive Director of the Climate Science Coalition of America, a non-political association of scientists, engineers, and citizens dedicated to informing Americans about the realities of climate science and energy economics.

Earlier this year, California passed regulations that would turn the trucking industry upside down. New mandates for zero emissions trucks would disrupt the industry, raise shipping costs, and put trucking companies out of business. A group including 19 states and several trucking organizations recently filed suit to block the California regulation.

California's Advanced Clean Fleets (ACF) Regulation goes into effect on January 1, 2024. The ACF requires [rmi.org] that truck operators buy only Zero Emissions Vehicle (ZEV) trucks for medium-duty and heavy-duty trucking operations as early as January 2024. The ACF also requires that trucking companies transition their fleets to 100 percent ZEV trucks by 2035 to 2042, depending upon class of truck.

On November 3, 19 state attorneys general and several trucking organizations filed [landline.media] a brief in the US Court of Appeals for the District of Columbia Circuit to block ACF. The suit argues that the ACF regulation is unconstitutional and highlights the negative consequences of forced electrification of the heavy truck fleet.

ZEV trucks are plug-in battery electric trucks and hydrogen fuel-cell trucks. The goal of ACF is to remove all trucks with internal combustion engines from California roads by as early as 2035.

According to the regulation [rmi.org], new trucks for drayage, high priority truck fleets, and public fleets must be ZEV trucks as of January. Drayage trucks operate at California ports or transport containerized freight to and from intermodal rail yards. High-priority fleets belong to private companies with more than 50 trucks or over $50 million in annual revenue. Public fleets are owned by state and local governments.

For practical purposes, ACF will require half of all new heavy-duty truck sales to be electric trucks, instead of diesel trucks. Few new trucks would be hydrogen fuel-cell trucks, which are not competitive at this time.

Under the Clean Air Act of 1967, Congress preempted states from adopting emissions standards for motor vehicles. But in Section 209 of the Act, California was permitted to seek a waiver from this preemption. In March of 2023, the Environmental Protection Agency granted [epa.gov] a waiver to allow California to establish the ACF emissions standard for heavy trucks. If this waiver stands, the Advanced Clean Fleets Regulation may allow California to try to force a national transition to electric trucks.

The suit filed against Advanced Clean Fleets regulation argues [landline.media] that the EPA should not have granted the waiver. It argues that the ACF crosses state lines, and that California should not be allowed to regulate trucking for the nation.

Eight other states, Colorado, Maryland, Massachusetts, New Jersey, New York, Oregon, Vermont, and Washington, have already adopted [foxnews.com] California's ACF rules. Another six states are expected to join. But can electric trucks do the job?

Electric trucks suffer major disadvantages when compared to diesel trucks. Diesel trucks can travel about 1200 miles after filling the tank in 15 minutes. The range of electric trucks is about 150-330 miles and recharging may take hours, even on a high-speed charger.

Electric truck cabs cost two to three times as much as diesel cabs, an incremental cost of as much as $300,000 per truck. Electric cabs also weigh about 10,000 pounds more than comparable diesel versions. This can reduce net freight carried by as much as 20 percent.

Few heavy truck charging stations exist, and the power requirements are huge. The new heavy-duty truck charging station [spectrumnews1.com] in South El Monte, California can charge up to 32 trucks in about 90 minutes. The South El Monte site was funded [fleetequipmentmag.com] through the Joint Electric Truck Scaling Initiative, funded by California state and local agencies. But six megawatts of electricity will be needed to simultaneously charge these trucks, more than the power consumed by 200,000 homes or used in a small California city, such as San Bernardino or Huntington Beach.

But the South El Monte site is one of very few heavy truck charging sites. The California Energy Commission estimates [reuters.com] that 157,000 medium- and heavy-duty chargers will be required by 2030. If these are built, the peak electricity draw could be as much as an additional 5,000 cities the size of San Bernardino. It's very unlikely that the California grid could deliver this much power. Heavy duty charging sites would also need to be built all over the nation.

The California Air Resources Board, which established the ACF, claims that the regulation is needed to "protect the public health and welfare of Californians." But ACF benefits to Californians will be negligible. Particulate air pollution in California has been reduced to such low levels that a single large wildfire exhausts [legalinsurrection.com] more particulate pollution in a few days than all California vehicles exhaust in an entire year. China emits [globalcarbonatlas.org] more greenhouse gases in a day than California trucks emit in a year.

California's Advanced Clean Fleets regulation, if adopted, will be a disaster for trucking and consumers. The jump in truck costs will put small truckers out of business. Freight delivery times will increase because of long charging times. Longer delivery times and smaller loads will require 20 to 50 percent more trucks to move the same amount of freight.

In 2022, trucks moved [trucking.org] 73 percent of US domestic freight. Forced adoption of electric trucks will boost the cost of food, medicines, clothing, and materials for consumers and businesses, put upward pressure on inflation, and provide negligible pollution control benefits. The US Court of Appeals and other states should reject California's ACF regulation.

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ARTICLE

In Federal Takings, Kohl V. United States Was the GOAT!

By Jeremy Bagott, MAI, AI-GRS

Ed. Note: Jeremy Bagott, MAI, AI-GRS, is an independent fee appraiser specializing in the valuation of real property rights for right-of-way clients in Southern and Central California. He is author of "The Compact Real Estate Appraiser" and "Guaconomics: Dipping a Chip into America's Besieged Party Bowl [gmail.us6.list-manage.com]."

VENTURA, Calif. (Aug. 18, 2023) – The outcome of Kohl v. United States seems predictable today, but only a decade after the end of the Civil War, matters involving States Rights were to be avoided at all costs.

The Fifth Amendment always contained the phrase "nor shall private property be taken for public use, without just compensation," but for the nation's first 100 years, the federal power of eminent domain was dormant for a property that wasn't in the District of Columbia. It was unclear whether the federal government could directly acquire a privately owned property through eminent domain if the property were located in a state.

That is, until the U.S. Supreme Court examined the matter in 1876 in Kohl v. United States. This landmark case is the greatest of all time – the GOAT – when it comes to settling federal eminent domain authority. While the petitioners protested that no act of Congress was used to determine the details of an acquisition, the high court ruled such legislation was unnecessary.

To modern observers, with the benefit of hindsight, the matter before the Waite Court may appear clear-cut. But it wasn't at the time. With the wounds of the Civil War still fresh, Congress steered clear of head-on collisions over States Rights. For federal condemnation of land, the respective state would have to give authority for a proceeding and the appropriation would have to be made through state law and by the decision of state courts. Kohl v. United States changed all that. It established that the federal government could directly condemn land for its own uses.

Wrote Associate Justice William Strong for the majority: "The Fifth Amendment contains a provision that private property shall not be taken for public use without just compensation. What is that but an implied assertion, that, on making just compensation, it may be taken?"

Another sticky subject Kohl addressed was whether the government could determine the value of a property in order to "justly compensate" the property owner. The majority ruled the property could be appraised by the government.

The condemnee in the Kohl case was the owner of a leasehold estate. In June 1873, U.S. Attorney for the Southern District of Ohio, Warner M. Bateman, filed a petition in the Hamilton County Probate Court to appropriate, under the right of eminent domain, the lot for a U.S. post office, custom house and other government buildings. The taking comprised 25 parcels on about 4 acres.

But the gimlet-eyed property owner, estate executrix Mary R. Kohl, noticed there was nothing in the action of the legislative branch of the federal government providing for the exercise of such power. It opened a Pandora's box that took the matter before the U.S. Supreme Court.

Strong, a Grant appointee, called the federal government's authority to appropriate property for public uses "essential to its independent existence and perpetuity." With that, the Supreme Court birthed the existence of federal condemnation authority in the states.

Writing the dissent was Associate Justice Stephen Johnson Field, an irascible Californian and Lincoln appointee who had served as alcalde of Marysville under Mexican rule and state assemblyman for Yuba County after statehood. He had been appointed chief justice of the California Supreme Court after his predecessor, Chief Justice David S. Terry, had killed U.S. Senator David Colbreth Broderick in a duel and left the state.

Field embraced a States Rights stance, pointing out, "The Federal courts have no inherent jurisdiction of a proceeding instituted for the condemnation of property, and I do not find any statute of Congress conferring upon them such authority."

Less than a year after Kohl, Strong was tapped to be one of the five justices to sit on the Electoral Commission convened to resolve the disputed electoral votes in the contentious U.S. presidential election of 1876. The commission awarded the disputed votes to Ohioan Rutherford B. Hayes.

SCHOLARSHIP OPPORTUNITY

Canadian Right of Way Education Foundation

The Canadian Right of Way Education Foundation is pleased to announce that applications are now being accepted for the

2023/2024 Canadian Right of Way Education Foundation High School Scholarship

A scholarship will be awarded each year in the amount of $2,500.00 (Canadian Dollars) to a graduating high school student who is entering a full-time course of study in any of the various fields impacting the right of way profession. The scholarship amount may be awarded to one applicant or split among more than one applicant.

- Areas of study may include (but are not limited to) law, surveying, engineering, planning, real property appraisal, public administration or environmental studies.
- Students applying are not required to be a relative of any IRWA Member.
- No Geographical Restriction: This scholarship is open to every high school graduating student in any of our member countries:
  - Canada
  - the United States, or
  - Internationally

Deadline to Apply: Application, along with all supporting material, must be received via e-mail to info@crwef.ca by March 13, 2024.

Please feel free to share this information with your members or other individuals you feel may be suitable applicants.

Thank you.

_____

Brian Taylor, SR/WA
Vice President
Canadian Right of Way Education Foundation

DOWNLOAD APPLICATION

MEMBER SPOTLIGHT

Jacinto Munoz

We would like to welcome to Chapter 67 Jacinto Munoz, MAI, SRA, AI-GRS, AI-RRS, Managing Director, Principal of Cogito Realty Partners. Jacinto (or you may know him as "Jay") is a real estate appraiser and member of the Appraisal Institute. Jacinto is a U.S. Navy Veteran and has more than 25 years of experience in valuation, lending, litigation support, eminent domain/condemnation, arbitration, mediation, deposition, underwriting, review, tax appeal, development, expert witness, and environmental real estate roles, with extensive valuation experience across all asset types nationwide and internationally.

Prior to joining Cogito Realty Partners, Jacinto served as a Managing Director and Head of Strategy and Compliance for Apprise by Walker and Dunlop. He also served in a variety of roles with JPMorgan Chase Bank, which included serving the bank as a Regional Appraisal Manager, National Commercial Lending (CML) Review Manager and most recently, in a senior leadership role as the National CTL Appraisal Manager, which was responsible for leading a team of more than 100 managers, appraisers, and administrative professionals nationwide.

Jacinto has conducted research, prepared appraisals, reviewed, consulted, and/or completed inspections of numerous property types nationwide, which include a wide variety of commercial land, subdivisions, multifamily apartments, health care facilities, auto dealerships, hotels, parking garages and surface lots, industrial properties, mobile home parks, self-storage facilities, office buildings, retail properties, special purpose facilities, air and water rights, synthetic leases, and various other stand-alone commercial assets. He especially enjoys presenting and teaching to help bridge the gap between the textbooks and his own real life appraisal experiences.

Even as a new member, Jacinto has been very active in IRWA having presented at the International Conference in Denver last year and currently serving as co-chair of the Valuation Committee for Chapter 67. He is also running for the role of Chapter Secretary. When asked why he wanted to be involved with IRWA, he said he wants to help strengthen the IRWA through volunteering and service on committees and to network with other people in the right of way world.

You are already helping to strengthen Chapter 67—we welcome and thank you Jacinto!

TRI-CHAPTER RECAP

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