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**Next Meeting:**  
Tuesday  
June 8, 2010

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## PRESIDENT'S MESSAGE

By Michael L. D'Angelo, Esq.

Well, this is it...my final address as the Chapter 67 President. It is cliché to say so, but the time really has flown by, and that's with the extra six months that I've been here following the vote last year to amend the Chapter by-laws and move our election cycle to a fiscal year system. Not only has my primary wish been fulfilled, namely, to avoid having the Chapter implode on my watch, but I actually think I'm leaving the Chapter in a better place than when I took over. During the past eighteen months, the Chapter held two Spring Seminars, hosted the Tri-Chapter luncheon, and put on several education classes, all of which were very successful and restored much-needed cash flow to the Chapter's balance sheets. Additionally, we have seen monthly luncheon attendance increase, due in no small part to the quality of the speakers that we have been able to present, while Chapter membership also has grown significantly in recent months.

While I would love to say that all of this has been due to my efforts, the truth is that the only "credit" I can claim is to have been in the right place at the right time. I owe a tremendous debt of gratitude to all of the other members of the Chapter 67 Board, whose hard work and dedication really made the difference. Fortunately for us, most of those Board members are returning for another year of service, so I look forward to the Chapter having continued success in the coming year.

With that, I am very pleased to introduce to you the 2010/2011 Chapter 67 Executive Board:

- President: Michele Folk
- President Elect: Rick Rayl
- Treasurer: Ben Rubin
- Secretary: Artemis Manos
- Director 1 Year: Michele Folk
- Director 2 Year: Rick Rayl
- Education Chair: Mike Williams
- Newsletter: Katherine Contreras
- Nominations Committee: Joan Rudisil, Michael D'Angelo, Katherine Contreras
- PDC: Michele Folk (Chair), Sharon Hennessey, Michael D'Angelo
- Public Agency Liaison: Beth Kiley
- Pipeline Chair: Joe Munsey
- Environmental Chair: Orell Anderson
- Case of the Month: Brad Kuhn
- Relocation Chair: Michele Folk
- Seminars/Events Chair: Brad Kuhn



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**Nominations / Service Awards:**

Joan Rudisil  
Mike D'Angelo  
Katherine Contreras

- Hospitality Chair: Joe Munsey
- Valuation Chair: Casey Jones
- Legislative Chair: Brad Kuhn
- Chapter Advisor: Mike Rubin

Please join us for the installation of the new Board at our next monthly luncheon, the last one before the summer break and my last one as Chapter President, on June 8, 2010. Our speakers will be Tom Bogard of OCTA and Ricky Rodriguez of Caltrans. Mr. Bogard leads the capital development program for OCTA and is responsible for managing the engineering and construction of highway projects for the \$12 billion Renewed Measure M half-cent sales tax program. Mr. Rodriguez is Caltrans' District 12 Right of Way Chief. They will be discussing the Caltrans-OCTA partnership delivering projects and upcoming ROW services procurements.

Thank you again for allowing me the opportunity to be the Chapter 67 President. And thank you again to the entire 2009/2010 Executive Board for all of your efforts in making the past eighteen months so successful for the Chapter.

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## CHAPTER BUSINESS MEETINGS – SUCCESS IS OUR GOAL

Your Chapter’s Executive Board continues its duties and obligations to chart the success of the premier IRWA Chapter. We encourage members to attend and see your Executive Board in action.

The Executive Board meets immediately after the general IRWA 67 luncheons  
Next Board Meeting is: June 8, 2010.

### June 8, 2010 SPEAKER

Tom Bogard of OCTA and Ricky Rodriguez of Caltrans.

Mr. Bogard leads the capital development program for OCTA and is responsible for managing the engineering and construction of highway projects for the \$12 billion Renewed Measure M half-cent sales tax program. Mr. Rodriguez is Caltrans’ District 12 Right of Way Chief. They will be discussing the Caltrans-OCTA partnership delivering projects and upcoming ROW services procurements.



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**Valuation:**

Casey Jones

## EDITOR'S CORNER

*Katherine Contreras, Esq.  
Nossaman LLP*

Summer is just around the corner. But before everyone takes off, there is still a lot going on in the IRWA. Our regular monthly lunch is Tuesday June 8<sup>th</sup> and later this month, our chapter representatives will go to the International conference. Then, it will be time for us all to take a break. We will resume our regular lunch meetings in September.

### Raffle Sponsors

Thank you to the sponsors of our May raffle:

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Also, too bad for Claudia Vasquez. She missed her chance to win \$75 just for being here. June's attendance raffle winner will get \$75. So show up for your chance to win.

### Board News

Our new board takes office this month. Please join me in giving a big thank you to our out-going board. Our board meets immediately after the lunch meeting. Feel free to join us.

Looking forward to seeing you all at the lunch on June 8<sup>th</sup>.

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## Photos of our 2010 Award Recipients



George Hamilton Jones accepts the award for the Employer of the Year (Less than 20 employees)



Chapter President, Michael D'Angelo, presents Michele Folk of OPC the Sustaining Member of the Year Award



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Chapter 67 New Member Award goes to:  
Ben Rubin of Nossaman, LLP



Employer of the Year (More than 20 employees):  
Ray Armstrong accepts on behalf of Overland, Pacific and Cutler (OPC)



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There is no case of the month this issue.

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## NEWS AND EVENTS

### NEW MEMBERS AND TRANSFERS

#### NEW MEMBERS

Nothing to Report

#### TRANSFERS

Nothing to Report

### SPRING SEMINAR

Thanks to all of you that attended the Spring Seminar on renewable energy. For anyone interested in reviewing the Power Point presentations or printing them out for their files, our speakers have generously allowed us to post the presentations online. You can click on the link below to obtain a pdf version of each of the Power Point presentations.

<http://www.californiaeminentdomainreport.com/>

### EVENTS

#### Board Meeting:

The next board meeting June 8, 2010 immediately following the luncheon.



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## ARTICLES

### **Buyer Beware: Improper Sale Documentation Results In Waiver of Inverse Condemnation Claim**

Authored by: Bradford B. Kuhn, Rick E. Rayl

If a party purchases property impacted by a governmental taking, and the purchase price already reflects the damages suffered by the taking, can the purchasing party still pursue the government for damages? The California Court of Appeal chimed in on the issue last week in *Ridgewater Associates LLC v. Dublin San Ramon Services District* 2010 DJDAR 6841. The court held that a property owner cannot recover for inverse condemnation where it knowingly purchases property impacted by a government taking, and the purchase price reflects the property's condition in light of the government impacts.

The case is important not simply because the property owner was thrown out of court despite what amounted to an admitted taking of private property without payment of just compensation. What really matters here is that it should have been relatively simple to avoid the problems the property owner faced in *Ridgewater*.

The simplest solution would have entailed the prior owner filing an inverse condemnation action. However, even if the prior owner simply wanted "out," it could have easily assigned its inverse claim to the buyer. Since both the seller and the buyer inadequately documented the transaction, neither had a remedy for what amounts to an ongoing taking of the property. And the government essentially got a "free pass" for its taking.

*Ridgewater* purchased a warehouse on a one-acre property immediately adjacent to a sewage treatment facility operated by the Dublin San Ramon Services District. Prior to purchasing the property, *Ridgewater's* inspections revealed water intrusion that *Ridgewater* believed caused damage to the property. As a result, the seller reduced the purchase price from \$2.65 million to \$2.5 million. Critically, in agreeing to a reduced purchase price, the parties did not take any specific steps to preserve the prior owner's inverse condemnation action against the District and, in particular, the seller did not assign - at least not clearly - its claims against the District to *Ridgewater*. (While the Court of Appeal noted that the purchase agreement states that *Ridgewater* acquired "all rights of the previous owner," the trial court found that the undisputed material facts demonstrated there was "no evidence that the purchase agreements transferred to *Ridgewater* the former owners' rights to pursue an inverse condemnation action.")

Shortly after the close of escrow, *Ridgewater* sued the District for inverse condemnation, claiming that the warehouse had been damaged by water intrusion from the District's water treatment plant. The complaint alleged that the District's plant had caused cracks in the slab foundation, concrete erosion, cracking and bulging in and outside the warehouse, water seepage, and soil erosion.



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The District moved for summary judgment, arguing that Ridgewater lacked standing because any injury to the property occurred before Ridgewater purchased it, and therefore Ridgewater was not harmed by any taking. The trial court granted the motion, finding that Ridgewater did not have standing to pursue the inverse condemnation claim because it was aware of the conditions and it could not demonstrate any injury that occurred during its ownership of the property.

On appeal, the court first provided the necessary backdrop for an inverse condemnation claim, explaining that the property owner must demonstrate: the agency substantially participated in the planning, approval, construction, or operation of a public project or improvement that proximately caused injury to plaintiff's property and the taking results in property damage, other depreciation in market value, or unlawful dispossession of the owner.

As to the standing issue, Ridgewater argued that it was only seeking compensation for damages that accrued after it purchased the property. (Ridgewater apparently did not argue that it could recover for earlier damages under an assignment of rights from the seller.) In particular, Ridgewater claimed that the District's operation of the sewage treatment plant caused "continuous and repeated" damage to its property because the District periodically adds additional water to its treatment plant, and each time this water is added, a taking occurs. The District, in response, relied on case law holding that a claim for inverse condemnation "remains in the person who owned the property at the time of the taking or damaging, regardless of whether the property is subsequently transferred to another."

The court sided with the property owner on the standing issue, holding that Ridgewater's claims for damages accruing after the purchase provided Ridgewater with sufficient standing to assert an inverse condemnation claim. But the property owner's good news ended there.

While the court noted that the evidence proved it was "highly likely that the property was damaged for public use," Ridgewater nonetheless had no viable claim. Ridgewater was aware of the water intrusion conditions prior to purchasing the property - and, more importantly, the price it paid was reduced to take those conditions into account. The court held that this price reduction eliminated any claim for diminution in value, as Ridgewater was already "compensated" for any such diminution through a reduced purchase price.

From a property owner's perspective, the Ridgewater case provides important guidance for any buyer or seller of property that involves a potential inverse condemnation claim. First, the parties should understand that for damages arising prior to the sale, the claim rests with the seller; it does not automatically transfer to the buyer. This is crucial, because it means that either the seller must proceed with the inverse condemnation action after the sale, or the seller must assign its rights to the buyer, allowing the buyer to pursue the seller's claim.

Second, for ongoing situations such as the water intrusions in Ridgewater, the parties should take care to document any adjustments to the purchase price so as to avoid, if possible, the holding in Ridgewater that the buyer has already been "compensated" for the damage.



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From an agency perspective, there is also an important lesson in Ridgewater. Government agencies should pay particular attention to the title history of any property when getting sued for inverse condemnation. Any time a property has transferred recently, the agency should take steps to determine whether the parties were aware of the potential claim and, more particularly, whether the buyer received any discount on the purchase price as a result of any such issues. This can easily be determined through the course of routine discovery, as long as the agency's attorneys understand the issue - and ask the right questions.

# Blog it.

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## EDUCATION CORNER

Mike Williams, Education Chair

### Chapter 67 Education Program

**Course 801 – “US Land Titles”:** This advanced course builds upon prior professional knowledge and provides participants with information about analysis of abstracts to determine who must execute a conveyance; learn terminology of title estates, covenants, liens, encumbrances, and contracts; and understand the preparation of chains of title from public records.

- **Dates:** Wednesday & Thursday, July 28-29, 2010
- Click here for the [801 U.S. Land Titles 07.28.10 Irvine, CA](#) registration instructions.

**Course 802 – “Legal Aspects of Easements”:** Designed as a course for experienced right of way professionals, this course provides the background theory and rationale of easements. Terminology and concepts are brought to life with examples and exercises. Through an understanding of legal considerations, future problems can be avoided in the appraisal, acquisition and management of easements.

- **Dates:** Friday, July 30, 2010
- Click here for the [802 Legal Aspects of Easements 07.30.10 Irvine, CA](#) registration instructions.

**All three of these classes are filling up fast. Don't delay, register today!**

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**\$100 Course Discount Coupon:** Bring your coupon to the monthly luncheons and once you've obtained three months of initials from our Treasurer, the coupon can be redeemed for \$100 off of any Chapter 67 offered course. Coupons can be found on the last page of the “Bundle of Writes”, our chapter's monthly newsletter.

Both of these incentive programs are great deals, so take advantage of them while they're available!



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We are also happy to introduce our new \$100 course discount coupon for members of Chapter 67. All you need to do is attend three luncheon meetings within the next year and ask the Treasurer to initial your coupon to receive the discount on Chapter 67 sponsored IRWA courses.

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--	--	--

***Expires 12/10***

## LAND SPECIALIST (J) (Open) w/Supplemental Questionnaire

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**Salary Range** 63,912 - 79,812

**Employment Type** Regular

**Eligible List** Yes

**Selection Process** Application review and interview

[Employment Application Disclosures](#)

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### Purpose

To appraise and arrange for the acquisition of real property and easements (rights of way) to meet District facilities needs.

### Essential Functions

1. Appraises, or directs and oversees consultant's appraisal of, real property and easements (rights of way) for District generation, transmission, distribution, communication and administrative facilities, utilizing professionally accepted appraisal techniques; estimates the value of land and improvements; reviews appraisals; performs appraisal contract administration.
2. Negotiates (or oversees consultant negotiation) for the acquisition of real property and easements with property owners, attorneys, lessees, and/or other parties-in-interest, by purchase or voluntary grant; researches public records to verify property taxes and assessments, liens and encumbrances, and ownership; prepares cost estimates, feasibility studies, and other special reports; prepares escrow instructions and all documents involved in and necessary for property and easements acquisition; develops and negotiates leases of property for District use; prepares and secures approval for special realty contracts and agreements.
3. Performs property management functions for assigned land projects up to their release for construction by performing such duties as coordinating and overseeing the operation of the properties; making field inspections of the properties as required; reviewing and approving professional service contracts and other consultant work; preparing and evaluating feasibility studies and financial analyses; and maintaining comprehensive and accurate records.
4. Maintains an up-to-date knowledge of legal factors having a bearing on current and proposed land use by the District by reviewing and analyzing legislation, litigation, special assessment districts, zoning regulations, and asset management activities.
5. Facilitates approval of District land use projects by developing and making oral and written recommendations and presentations to District executive management and governmental bodies.
6. Provides information to the public, i.e., property owners, developers, consultants, tenants, public entities and quasi-public entities, by conducting and participating in community/public meetings to explain and answer questions about land use requirements, rights, and restrictions concerning the siting and routing of District facilities.
7. Assists in developing and conducting siting and routing studies as an aid for decision to be made by coordinating and supplying detailed background, legal, and regulatory information on properties concerned to engineering, environmental planning, and other project staff involved.
8. Coordinates construction work on major projects, resolves problems, and responds to rate payer concerns and questions by working effectively with District personnel, property owners, contractors, other agencies, and the general public.
9. Performs related duties as required.

## Minimum Qualifications

### [KNOWLEDGE OF:]

Federal, state and local laws, codes and regulations governing California real estate, title and escrow practices, eminent domain, governmental utility license/permit requirements, ad valorem taxes and public improvement assessments, and basic CEQA regulations relative to land and easement acquisitions; principles, procedures and practices related to land surveys and mapping, appraisal of land and easements, legal descriptions, negotiating techniques, basic electrical system design and construction; methods and techniques for report preparation and writing; techniques and strategies for public speaking; techniques related to customer relations; procedures and practices for overseeing contractor's/consultant's work activities.

### [SKILL TO:]

Compile and prepare technical, statistical and/or analytical reports and presentations; develop and conduct oral presentations to internal/external audiences; explain complex and/or controversial policies, regulations, procedures and/or activities internally/externally; express ideas/facts clearly and concisely to individual or groups, taking into account the audience and nature of information; respond to and resolve customer issues, concerns and needs; analyze situations, documents and data for conformance to established policy and procedures; apply applicable laws, codes and regulations; gather data from appropriate sources and identify relevant factors; interpret, analyze and apply pertinent policies, procedures, regulations and requirements; interpret, clarify, understand and analyze verbal/written information and ideas; negotiate with external representatives on behalf of the District; research, analyze and provide recommendations to achieve department objectives; effectively negotiate acquisition of land rights, paid and gratis; interpret land use laws, ordinances and regulations; appraise real property and easements; analyze appraisal reports and environmental documents; interpret/prepare legal descriptions including metes and bounds, and the various documents, maps, and drawings used in real estate transactions; read engineering, architectural and construction plans; analyze problems and develop practical solutions; utilize a personal computer and/or computer terminal, systems and software relevant to the job; communicate effectively orally and in writing internally/externally; establish and maintain effective working relationships internally/externally.

### [EXPERIENCE:]

3 to 5 years of progressively responsible relevant work experience in negotiating and completing the acquisition of real property and easements for utility use, appraising real property and easements, and working with project teams and the public.

### [EDUCATION:]

High school diploma or equivalency.

**NOTE: YOU WILL BE ASKED TO RESPOND TO THE FOLLOWING SUPPLEMENTAL QUESTIONS WHICH WILL BE THE LAST STEP OF THE ON-LINE APPLICATION PROCESS.** This questionnaire must be completed for employment consideration. There is a 3,000 character limit per question. In addition, the system will time out after 60 minutes if you have not completed your responses to the supplemental questions; therefore, we recommend that you prepare your answers in advance using a word processing program and then copying your responses into the appropriate fields of the on-line application. PLEASE DO NOT INDICATE "REFER TO RESUME" AS IT WILL BE VIEWED AS AN INCOMPLETE ANSWER.

- 1) Real Property Acquisition: Describe in detail your experience in the area of real property acquisition. In your response, include the number of times you formed the task, what the purpose was, and where you acquired this experience.
- 2) Land & Easement Appraisal: Describe in detail your experience in land and easement appraisal preparation and review. In your response, indicate the types of appraisals, what the purpose was, and where you acquired this experience.
- 3) Permitting and Right of Way Acquisition: Describe in detail your experience in acquiring ROW's required for construction, utility and/or maintenance work. In your response, indicate the types of ROW's you have acquired, how you prepared and completed the ROW function, where you acquired this experience, and your years of experience.
- 4) Legal Documents: Describe in detail your experience preparing legal documents used in real estate transactions (including deeds, rights of way, contracts and leases). In your response, indicate the types of documents prepared, what the purpose was, and where you acquired this experience.
- 5) Legal Descriptions: Describe in detail your experience in reading and plotting legal descriptions including metes and bounds. In your response, indicate where you acquired this experience.

6) Land Titles, Real Property Taxes and Assessments: Describe in detail your experience searching and examining land titles, real property taxes and assessments, In your response, indicate the purpose and where this experience was acquired.

7) Presentations: Describe in detail your experience in developing and providing oral and written presentations to the public and staff of government agencies. In your response, indicate your experience in delivering relevant presentations to successfully obtain approvals for projects, permits, license and property easements, and where this experience was acquired.

### **License/Certifications**

A valid California Drivers License

### **Desirable Qualifications**

[EDUCATION:]

Bachelor's degree from an accredited college or university majoring in Real Estate or related field or equivalent experience.

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