



BUNDLE OF WRITES

INTERNATIONAL RIGHT OF WAY ASSOCIATION

18101 Von Karman, Suite 1800
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www.irwa67.org

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Next Meeting:
Tuesday
March 8th, 2011

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PRESIDENT'S MESSAGE

By Michele Folk, SR/WA, R/W-RAC

Members:

What a great turn-out for our Past President's luncheon! There was definitely a buzz in the room as people reconnected and caught up with old friends and associates. I got the feeling we all wished we had more time to visit before returning to work.

IRWA Headquarters is launching a new group, Young Professionals in the Right of Way Industry, which I briefly talked about at our last luncheon. Currently, the group is made up of individuals working in the right of way industry that are 30 years old and under **or** individuals who are new to the right of way profession and would like to start their careers off in the right direction. Members of the group will have assistance with mapping a path of professional development through credentialing, targeted coursework and leadership opportunities at the local, regional and international levels.

A launch event is being held in Las Vegas March 30 – April 1 for the Young Professionals group. The Chapter Board has voted to sponsor two eligible members, who are interested in attending the meeting in Las Vegas. Based on the advertised costs of registration and lodging, and the estimated costs of travel and meals, the Chapter will reimburse the event costs to the participating sponsored members. The Board believes we need to cultivate and promote our next generation of leadership. If interested in attending, or if you want to refer a member who may be interested with more information, please contact me at mfolk@opcservices.com. Anyone interested in joining the group can visit the IRWA Young Professionals webpage at:

https://www.irwaonline.org/EWEB/startpage.aspx?site=irwa_vp

We meet again for our March luncheon on Tuesday, March 8th. Our guest speaker for March's luncheon will be Ken Lee with Rosenow-Spevacek Group, Inc., a consultant for public and private agencies. Kathleen Rosenow serves on the Advisory Board to the CRA, and her colleague Ken Lee will bring us up to date on the current situation with the proposed abolition of redevelopment agencies in California and the counter efforts to preserve them.

Please join us at the Santa Ana/OC Airport Holiday Inn, located at 2726 South Grand Boulevard, Santa Ana, CA 92705, and please remember to RSVP to Joe Munsey at jmunsey@semprautilities.com. Our Board Meeting will follow immediately after the luncheon. We encourage you to attend to see the Board in action and get more information on the different positions and associated responsibilities. Board and Committee Chair elections are coming up in the near future, and we need more volunteers.

Have a great week, and see you on the 8th!



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Katherine Contreras,
Esq.

Case of the Month:

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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: March 8, 2011.

MARCH 2011 SPEAKERS

Ken Lee

“The Proposed Abolition of Redevelopment Agencies in California”

Ken Lee of Rosenow-Spevacek Group, Inc. will be updating us on the current situation with the Governor's proposal to eliminate redevelopment agencies. RSG is a consultant for public and private agencies. Kathleen Rosenow serves on the Advisory Board to the CRA, and her colleague Ken Lee will bring us up to date on the current situation with the proposed abolition of redevelopment agencies in California and the counter efforts to preserve them.

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Bruce Hunsaker

EDITOR'S CORNER

Katherine Contreras, Esq.

It's almost spring and things are happening in Chapter 67. We continue to offer educational opportunities and also information regarding other classes in the Region. Check out our education section to find out more. Also, the Spring seminar is approaching. Look for more information on our website. I hope you can join us for our lunch on March 8th.

Board News

The board meets right after the monthly lunch meeting. All are welcome. We are currently discussing lunch speakers for the next few months. If you have an idea for a presentation, please let us know.

Also, we are currently seeking nominations for the upcoming year. If you are interested in joining the board or becoming more involved, please let Michele or another board member know.

Raffle Sponsors

Thank you to the sponsors of our February drawing:
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If you would like to donate to the drawing, please bring your item to the lunch. Thank you.

Attendance Raffle

Our attendance drawing is now \$100. Remember, all you need to do to win is show up.

Hope to see you on the 8th.



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CASE OF THE MONTH

Court Dismisses Appeal Arising From Stipulated Eminent Domain Judgment

By: Bradford B. Kuhn, Rick E. Rayl

Most eminent domain cases don't proceed to a full-blown jury trial. Most get settled somewhere along the way, and those settlements often come in the form of a stipulated judgment. When that happens, people tend to give little thought to a possible appeal down the road; after all, they've settled the case.

But sometimes, a lot remains to implement the stipulated judgment, and where those events are potentially controversial, parties typically state that the trial court retains jurisdiction to administer those future events. In *City of Gardena v. Rikuo Corporation* (Feb. 7, 2011), one such stipulated judgment went awry. The parties left \$750,000 on deposit to address ongoing environmental remediation, agreeing that the trial court would retain jurisdiction over the disbursement of the funds.

When a dispute arose over the court's distribution of the funds, the property owner sought to appeal the court's post-judgment order. The Court of Appeal dismissed the appeal, concluding that the order was not appealable because post-judgment orders are only appealable if they follow a judgment that is itself appealable. Since a stipulated judgment typically is not appealable, any post-judgment orders arising from such a judgment are also not appealable.

The Case

City of Gardena v. Rikuo Corporation arose from a 2004 eminent domain action filed by the City of Gardena. Following a mediation, the parties agreed that the city would pay Rikuo \$11 million for its property, with one key twist: the property had some contamination issues, and the city was going to need to spend considerable time and money cleaning it up. The parties therefore agreed to leave \$750,000 on deposit with the court to be used as a clean-up fund.

The resulting stipulated judgment provided that the trial court would retain jurisdiction over the \$750,000, with the idea being that the city could apply to the court for withdrawals to cover the costs of the ongoing remediation. Any money left over once the remediation was complete would go to the former owner.

As the remediation progressed, a dispute arose. The city sought disbursement of the funds, and the owner objected. When the court allowed the withdrawal over the owner's objection, the owner appealed.

On appeal, neither party questioned the order's appealability, and Code of Civil Procedure section 904.1 specifically provides for appeal from post-judgment orders. But following the briefing, the Court of Appeal raised an interesting issue: was this particular post-judgment order, entered after a stipulated judgment, appealable? Section 904.1 provides for appeal from a post-judgment order where the underlying



judgment is itself appealable. In *Rikuo*, the underlying judgment was stipulated, and longstanding California law holds that a consent judgment is not appealable.

Appealability

The Court of Appeal did not stop its analysis merely by reading section 904.1. It walked carefully through any other circumstances that might have created an appealable order. In particular:

Stipulated Judgments Entered to Facilitate an Appeal. The court noted a key exception that allows an appeal from a stipulated judgment. Where the parties stipulate to a judgment for the purpose of facilitating an appeal following an adverse ruling on a critical issue, the judgment is appealable just like any other judgment. (*Norgart v. UpJohn Co.* (1999) 21 Cal.4th 383, 400.) In such cases, any post-judgment orders would also be appealable. In this case, however, it was clear that the stipulated judgment reflected a true settlement, not an effort to facilitate an appeal following a key ruling, so this exception did not apply.

Post-Judgment Orders Concerning a Pre-Existing Deposit of Probable Compensation. The owner cited cases upholding the right to appeal from post-judgment orders related to a deposit of probable compensation. The Court noted, however, that those cases involved "a contested final judgment on the merits," making them no different from any other case in which an appealable, post-judgment order follows an appealable judgment.

Post-Judgment Orders Arising from a Stipulated Judgment that Does not Resolve All Issues. The owner also argued that since major substantive issues remained, the stipulated judgment was not intended as a final resolution of all issues. In other words, since the parties intended to allow the trial court to make post-judgment determinations on the issue of remediation, the parties impliedly reserved the right to appeal on those same remediation issues. The Court rejected this argument as well, because (1) the language of the stipulated judgment expressly stated that it was intended to resolve all issues – including the manner in which disputes over the cost of remediation would be resolved, and (2) even if the judgment could be construed as interlocutory (in effect, a partial judgment), the net result would be that once the remediation process reached a conclusion, the court would enter a final judgment, and that final judgment would still not be appealable since it arose from the same underlying settlement/stipulation.

Judgments Entered Pursuant to Code of Civil Procedure section 664.6. Section 664.6 provides a mechanism for parties to agree that the trial court retains jurisdiction over certain aspects of a case, even after a dismissal. Often, this includes the ability to enforce the terms of a settlement agreement. In the event the court issues an order to enforce the terms of a settlement under its continuing jurisdiction, that order would be appealable. However, the parties in *Rikuo* agreed that they had not complied with the requirements of section 664.6 and could not, therefore, use it as a basis for appellate jurisdiction.



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Lessons Learned

Settlements are a good thing. In many cases, both sides end up better off than they would if they litigated through trial. Still, settlements must be well thought out, and taking a one size fits all approach can create myriad problems. Especially where anything of consequence must happen after the judgment is entered, the parties must take care to think through those issues and take steps to ensure they do not find themselves in a situation where a dispute arises over a significant issue and they have no remedy if the trial court gets it wrong.

It is possible to structure settlements to avoid this problem, using the tools described above – or by creating a separate contractual right through the settlement process. If you are in the position of documenting such a settlement, make sure you have a qualified attorney involved in the process, and talk through what will happen if problems arise in the settlement's implementation.

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NEWS AND EVENTS

NEW MEMBERS AND TRANSFERS

NEW MEMBERS

Nothing to Report

TRANSFERS

Nothing To Report

EVENTS

Board Meeting:

The next board meeting March 8, 2011 immediately following the luncheon.

Spring Seminar:

Our Spring Seminar will be Tuesday May 10, 2011.



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Jennifer Riel McClure
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ARTICLES

PAST PRESIDENT'S LUNCHEON A SUCCESS

*Joe Munsey, RPL, Southern California Gas Company
Hospitality Chair*

Chapter 67 celebrated another outstanding Past President's Luncheon in February with seventeen (17) Past Presidents in attendance.

Name	Year of Office
Richard Riemer, II, Esq.	1978
Terry Swindle, SR/WA	1979
Jack Steward, Jr.	1983
Robert Stolhand, SR/WA	1984
Sandra L. Pinnell	1985
Daniel Brennan	1987
Sydney H. Hawran, MAI	1991
Mark LaBonte, SR/WA	1993
Ray S. Armstrong, SR/WA	1996
Dave Cosgrove, Esq.	1998
John Murphy, Esq.	2000
Kevin Donahue, MAI	2001
Barbara Zachry, MAI	2002
Keith McCullough, Esq.	2003
Rick Friess, Esq.	2005
Michael Quijano, RW-RAC	2008
Michael D'Angelo, Esq.	2009



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Mike Williams, Education Chair

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Requirements: 2+ years experience with public agency acquisitions preferred. College degree or acceptable experience required. Demonstrated real estate experience, excellent communication skills, and outstanding references are all necessary. Must have experience delivering right of way under the Uniform Act, and purchasing property under the threat of eminent domain. Experience working with Caltrans, delivery of right of way in Southern California and dealing with loss of business goodwill a plus. Must have willingness to travel in state for upcoming and future projects. Must have a current California real estate license. Proficient with MS Office, Word, Excel, Outlook, PowerPoint, Experience with database preferred. Ability to conduct research and navigate the internet for research.

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Requirements: Bachelors degree. 5+ years experience with public agency acquisitions preferred. Proficiency with Microsoft Office and Excel. Working knowledge of Project, ARGUS and ECONPAK software a plus. Ability to read, review and understand legal descriptions and the knowledge to draft the following types of real estate documents: deed, easement and lease. Must have experience delivering right of way under the Uniform Act, and purchasing property under the threat of eminent domain. Experience working with Caltrans, delivery of right of way in Southern California and dealing with loss of business goodwill a plus. Must have willingness to travel in state for upcoming and future projects. Must have a valid California real estate license.

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Young Professionals Invited to Attend

March 30-April 1, 2011
Las Vegas, NV



The IRWA Young Professionals Group is comprised of Association members age 30 and under. These individuals are either actively engaged in the right of way profession or just entering the field and want to give their career a jump start. To ensure success in this profession, it is essential that a career path be mapped out early on, through credentialing, targeted coursework and leadership opportunities at the chapter, regional and international levels.

A meeting of the Young Professionals Group will be held in Las Vegas, March 30–April 1, 2011. The Young Professionals Planning Committee has created the following meeting agenda based on their experience in the right of way profession:

- Introduction to Right of Way
- Right of Way Business Ethics and Etiquette
- Changing Industry Standards and Regulations
- How You Can Get Involved in IRWA Leadership and What Does it Entail?
- Tips and Tricks of the Right of Way Industry
- Leadership Development Training for the Young Professional
- IRWA Career Path and Designations

Special activities at the Annual Education Conference for Young Professionals and other events will be planned as the group expands.

IRWA is also connecting young right of way professionals through our LinkedIn Young Professionals group as a place to network on unique challenges they face. Anyone interested in joining can visit the IRWA Young Professionals webpage at: https://www.irwaonline.org/EWEB/startpage.aspx?site=irwa_yo

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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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