



BUNDLE OF WRITES

INTERNATIONAL RIGHT OF WAY ASSOCIATION

18101 Von Karman, Suite 1800
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www.irwa67.org

Inside this issue...

Volume 35, Number 4

President's Message.....	1
Editor's Corner.....	4
Case of the Month.....	6
News & Events.....	9
Articles.....	10
Education Corner.....	13
Employment.....	16

Next Meeting:
Tuesday
April 12, 2011

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PRESIDENT'S MESSAGE

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

Members:

After our last speaker, Ken Lee from RSG, gave us the low-down on the status of Governor Brown's attempts to dismantle redevelopment agencies throughout the state, it's interesting that as of today (March 25th), the vote is still pending in Sacramento. Hopefully the current proposal on the table from the CRA to offer revenues to schools will mitigate a vote on the Governor's original plan.

I am happy to announce that our Chapter will be sponsoring Daniel Chuong with HDR to attend the Young Professionals in the Right of Way Industry event in Las Vegas next week. We are looking forward to his report at our next luncheon.

Save the date! May 10th is our annual Spring Seminar. We will have several panels discussing the valuation of mobile home parks and mobile homes, mobile home acquisition and relocation issues and legal challenges and tips surrounding mobile home park acquisition.

This half day event will include lunch with an additional speaker, who will talk about past project challenges with the involvement of mobile home acquisition and relocation. The price will be \$75 for members / \$85 for non-members for those that pre-register within two weeks of the seminar. (The price will be \$90 if registered less than two weeks from the seminar.) **Please see the seminar announcement and registration form in this newsletter.** Members who cannot attend the full half day event are still encouraged to come for our regular luncheon gathering (\$15 for those that RSVP - \$20 at the door.)

We meet again for our April luncheon on Tuesday, April 12th. Our guest speaker for April's luncheon will be Orell Anderson, MAI of Bell Anderson & Sanders, LLC. Orell will discuss "environmental social justice" issues as related to eminent domain.

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. As always, all members are welcome to attend, and we encourage your participation.

See you on the 12th!



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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: April 12, 2011.

APRIL 2011 SPEAKER

Orell Anderson, MAI
Environmental Social Justice

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TBD

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Survey:

Bruce Hunsaker, PLS

EDITOR'S CORNER

Katherine Contreras, Esq.

Happy spring everyone. This spring is a busy time for our chapter. Please check out the website and this newsletter for important information regarding the upcoming events. These include our annual spring seminar and many educational opportunities.

Board News

If you are interested in becoming more involved in the chapter, please consider joining the board. There are many positions available. See a board member for more details. The board meets immediately following the monthly lunch meeting. Everyone is welcome.

Raffle Sponsors

March prize drawing: Thank you to the sponsors of our prize 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

Attendance raffle: Congratulations to Joan Rudisil, the winner of our attendance raffle. What did Joan do to win this \$100? She showed up to lunch. You can be like Joan and win too. All you need to do is come to lunch!

Our next lunch is Tuesday April 12th. Hope to see you there.



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CASE OF THE MONTH

Redevelopment Agencies Live to See Another...Day?

By: Bradford B. Kuhn, Rick E. Rayl

This month Governor Brown sought approval of his budget proposal from the leaders of both legislative houses. One of the most contentious overhaul items dealt with the elimination of California's redevelopment agencies. Along with a series of other bills intended to implement the Governor's budget plan, Senate Bill 77 was scheduled for a discussion. Because the package of bills is crafted as "urgency legislation" (meaning they would take effect immediately), passage requires two-thirds approval.

As the afternoon wore on in the Assembly, several bills were presented for a vote, including SB 77. Initially, most failed to garner the necessary support. But, as the day wore on, re-votes were called, and most of the bills before the Assembly ultimately passed with exactly the 54 votes required.

However, despite a series of votes lasting well into the night (the final vote was announced at around 9:30 p.m.), SB 77 continued to fall short, first garnering 50 votes and later receiving 53 votes – a mere one vote short of approval. All day, the votes aligned almost entirely along party lines, with Republicans refusing to agree to end redevelopment. The backdoor lobbying taking place is nothing short of fascinating. How the vote changed from 50 in favor to 53 over the course of the day, and why so many other measures eventually reached 54 votes (meaning enough Republicans were convinced to side with the Governor) when SB 77 could not will undoubtedly be an interesting tale – if we ever get to hear it.

But the debate is not over, and Governor Brown does not appear willing to throw in the towel quite yet. Rumors are circulating that plans are afoot for bypassing Republican legislators by placing a tax measure on the November ballot. Officially, the Governor's office remains focused on the original plan. In fact, the Governor's spokesman, Gil Duran, was quoted as saying [that it was "a lie" that the Governor has decided on a November election](#). However, other anonymous sources say that while Brown is continuing to negotiate with Republicans to put the tax extension on a June ballot, he is also considering two alternatives if those negotiations fail.

The first would be to place a tax extension on the June ballot by a simple majority vote in the Legislature. An [opinion from the Legislative Counsel Bureau](#), solicited by Senate Republican Leader Bob Dutton, suggests that a tax proposal could be placed on the ballot with majority vote so long as it addresses a statutory tax initiative already passed by the voters. Some Republicans have therefore argued that the Governor is seeking political cover by pursuing a two-thirds vote of the Legislature.



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On the other hand, not obtaining a two-thirds vote, as seems to be required by proposition 26, would be fraught with political and legal perils. The more likely alternative would be to place an initiative on the November ballot. It has been suggested that such an initiative could include [concessions to Republican interest such as regulatory reforms and a spending cap](#). This "Plan B" is not without its own difficulties. Assuming that some announcement is made this week, [proponents may have as little as three weeks to collect the hundred of thousands of signatures needed to qualify in time for the November election](#).

What has not been discussed, at least publically, is whether the Governor has a "Plan B" for redevelopment. If the bills abolishing redevelopment were reintroduced as non-urgency legislation, they too could be passed on a simple majority vote. What is uncertain is whether some pro-redevelopment Democrats would break ranks and oppose the legislation. After all, their vote to kill redevelopment placed many Democratic legislators at odds with their urban constituencies. If the Governor were to propose a November ballot initiative which includes significant concessions to conservative interests, some of those Democratic legislators may be more willing to vote against killing off redevelopment.

For all the updates, you can follow our blog at www.CaliforniaEminentDomainReport.com.



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NEWS AND EVENTS

NEW MEMBERS AND TRANSFERS

NEW MEMBERS

Daniel Chuong

TRANSFERS

Nothing To Report

EVENTS

Board Meeting:

The next board meeting April 12, 2011 immediately following the luncheon.

Spring Seminar:

Our Spring Seminar will be Tuesday May 10, 2011. Please look for the registration form and agenda at the end of this newsletter.



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ARTICLES

Use 'Em or Lose 'Em: A Warning to Severed Mineral Owners Dealing with Hostile Surface Owners

*By Tracy Hunckler & Ryan Stephensen
Attorneys with Day Carter & Murphy LLP in Sacramento, California
(daycartermurphy.com)*

Hostile surface owners—all of us have encountered them in connection with efforts to develop a severed mineral estate. Often you are able to work things out, but in some instances, the surface owner refuses to back down, denies you access to the surface and may even flat out deny that you have any rights at all. You are left in a position of filing a lawsuit to enforce your rights, finding other means to access the minerals, such as through adjoining property, or perhaps even moving onto other projects. Did you ever think, however, that if you don't take action to enforce your rights, you may lose them to the surface owner? Such a result is possible under the doctrine of adverse possession.

The adverse possession doctrine developed centuries ago under the English common law, at least in part, to deal with fragmentary land records(1). Back then, it was assumed that a cautious property owner would regularly inspect his property and eject any trespassers. Thus, a lengthy possession of land provided the best evidence of ownership. If a landowner did not bring suit within a given period of time to eject a trespasser, then he lost ownership and the trespasser gained title to the property by adverse possession(2).

Today, in the United States, adverse possession is a mix of statutory and case law with the precise requirements varying from state to state. Generally speaking, however, an occupant acquires title to land by adverse possession if his possession is:

1. actual;
2. exclusive;
3. open, visible, and notorious;
4. adverse (or hostile) under a claim of right (and under color of title or payment of taxes, in some states)(3);
5. continuous; and
6. for the statutory period(4).

In the oil and gas context, if the surface and mineral estates have not been severed, then adverse possession of the surface will generally mature into title to both the surface and underlying minerals(5). After severance of the mineral estate, the general rule is that adverse possession of the surface will not mature into title in the minerals. Typically, to acquire title to a severed mineral estate by adverse possession, one must take possession of the minerals by drilling or conducting other mining activities in addition to satisfying all of the other adverse possession



requirements(6). At least two state courts, however, have indicated that a surface owner may obtain title to a severed mineral estate through adverse possession without ever accessing or developing the minerals.

In *General Refractories Company v. Raack* (“*Raack*”) (7) surface owners in Missouri successfully gained title to the severed mineral estate through adverse possession without actually mining the minerals. In *Raack*, the plaintiffs claimed ownership of a severed mineral estate and filed a quiet title action against the surface owners. Twelve years earlier, the surface owners had sent a letter to the plaintiffs denying the plaintiffs’ interest in the mineral estate, and threatening to file suit for damages and injunctive relief if the plaintiffs ever attempted to access or develop the minerals. The surface owners also erected fences around the entire surface of the mineral estate. Based on these facts, the surface owners claimed adverse possession of the mineral estate as a defense to the quiet title action. The trial court found in favor of the surface owners (8).

On appeal, the plaintiffs relied on the general rule that one cannot adversely possess a severed mineral estate without “actual possession” of the mineral estate and thus, access of the surface estate alone is insufficient. Under this general rule, the plaintiffs argued that the surface owners had never mined or otherwise accessed the mineral estate and therefore had no basis to claim ownership thereof by adverse possession.

The appellate court recognized the general rule, but determined that it did not apply based on the facts of the case. The appellate court held that “actual possession” involves two things: a present ability to control the thing possessed, plus an intent to exclude others from such control(9). In the *Raack* case, the surface owners actually *had* excluded the plaintiffs from the mineral estate for 12 years. They had also sent the plaintiffs a letter denying their rights in the mineral estate. Under these facts, the appellate court concluded that the surface owner had “actual possession” of the mineral estate for the purposes of adverse possession(10).

The appellate court also emphasized that the surface owners’ letter gave the plaintiffs sufficient grounds to bring an action in ejectment. Because the plaintiffs sat on their rights, took no action, and acquiesced to the surface owners’ hostile claim for more than the statutory period (in that state ten years), the surface owners successfully gained title to the plaintiffs’ mineral interest through adverse possession (11).

Another case out of California also suggests that a surface owner may obtain a fee interest in a severed mineral estate by adverse possession without actually possessing or mining the mineral estate. In the seminal case of *Gerhard v. Stephens*(12), the surface owner defendants claimed to have extinguished the plaintiffs’ rights in the severed mineral estate through adverse possession by fencing in the land, using the surface for cattle grazing, and even granting oil and gas leases on the land. While the California Supreme Court denied the surface owners’ adverse possession claim, it noted that if the defendants had “covered the surface of [the severed mineral estate] with permanent improvements,” thereby obstructing the mineral owner’s development of the mineral estate, the defendants could have gained title to the mineral estate through adverse possession without ever exploring or developing the minerals(13).



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In legal terms, the California Supreme Court's statement on this issue is merely dicta, which means that it is not binding legal precedent. This statement, however, still could be used by a hostile surface owner as a persuasive argument in support of an adverse possession claim. If a severed surface owner raised such an argument, it would seem that (in states that have not adopted the ownership-in-place theory of mineral ownership), the severed mineral owner could respond that at most, the surface owner would acquire the surface access easement and not the mineral owner's right to access the minerals by way of horizontal or slant drilling from adjoining parcels.

The take away from the *Raack* and *Gerhard* cases is that a party holding a severed mineral interest should think about the potential of losing its rights through adverse possession when dealing with a hostile surface owner. Faced with a hostile surface owner who will not back down, it may be prudent, if not necessary, to respond by bringing an action in ejectment, as suggested in the *Raack* case; or by seeking an injunction to prevent the surface owner from interfering with your rights to explore and develop the mineral estate. The failure to take action within the statutory period for adverse possession (five years in California) may result in loss of some or all the mineral estate.

Ms. Tracy Hunckler & Mr. Ryan Stephensen are attorneys with Day Carter & Murphy LLP in Sacramento, California. They can be reached at (916) 570-2500.

(1) Sprankling, *Understanding Property Law* (2000) Adverse Possession, § 27.03, pp. 436-437.

(2) *Ibid.*

(3) California requires the payment of any property taxes assessed on the property during the statutory period. (Ca. Code Civ. Proc. § 325(b).)

(4) Leming et al., *American Jurisprudence* (2d Ed. 2010) Adverse Possession, § 10. In California, the statutory period is five years. (Ca. Code Civ. Proc. § 318.)

(5) Williams & Meyers, *Oil and Gas Law* (2010) Interests, § 224, p. 345.

(6) *Id.*, at § 224.1, p. 347.

(7) *General Refractories Company v. Raack* (Mo.App.Ct. 1984) 674 S.W.2d 97.

(8) 674 S.W.2d at 98.

(9) *Id.*, at 99.

(10) *Ibid.*

(11) *Id.*, at 99-100.

(12) *Gerhard v. Stephens* (1968) 68 Cal.2d 864.

(13) *Id.*, at 902-903.



EDUCATION CORNER

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https://prod.fadvhms.com/hdr/jobboard/NewCandidateExt.aspx?__JobID=13251

Or see the careers section of www.hdrinc.com and browse for job number 100765

Senior Right of Way Agent - 101592

Irvine, CA

Description: The primary duties of the Senior Right of Way Agent: Assist clients with many aspects of right of way delivery for public projects; feasibility, acquisition, appraisal, relocation, finance, costs, tax effects and project execution. May work directly with clients. Assists project managers and coordinates among team members focused on real estate, relocation and economic issues. Work will be performed with minimal supervision. May act as lead in directing and reviewing work of other Agents and support staff. Property acquisition and relocation of persons, businesses and personal property are the primary responsibilities. This position may be located in Irvine or Riverside, California. Keyword(s): Realty Specialist, Real Estate, Acquisitions, Relocation.

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.

This position may be subject to a pre-employment drug test and drug and alcohol testing during the course of your employment based upon HDR's Drug Testing and Drug Free Workplace Policy. An Affirmative Action Participant EOE M/F/D/V

To apply, please copy and paste this link into your browser
https://prod.fadvhms.com/hdr/jobboard/NewCandidateExt.aspx?__JobID=14140

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Right of Way Project Manager - 101769
Irvine, CA

Description: The Right-of-Way Project Manager manages right-of-way and utility issues for large and complex construction projects without supervision. Ensures all right-of-way acquisition, relocation and utility relocation schedules are met. Responsible for compliance with all local, state and federal laws and regulations and oversight of contract administration and payment of invoices.

Requirements: Bachelor's degree or equivalent required; advanced degree helpful. California Real Estate license is required. 7+ years of experience with right-of-way acquisition and relocation, and utility relocation; property management experience preferred. Applicant must be familiar with Uniform Relocation Act and Eminent Domain proceedings. Must have extensive experience with Caltrans policies and procedures, and with the preparation of Data Sheets and Right of Way Certifications. Position requires ability to develop and maintain excellent relationships with clients; strong communication and presentation skills; proven ability to deal effectively with property owners on fast track projects; ability to motivate and manage staff and proficiency with MS Office. May require workplace location in Los Angeles or Riverside as workload dictates.

This position may be subject to a pre-employment drug test and drug and alcohol testing during the course of your employment based upon HDR's Drug Testing and Drug Free Workplace Policy.

An Affirmative Action Participant EOE M/F/D/V

To apply, please use the following:
https://prod.fadvhms.com/hdr/jobboard/NewCandidateExt.aspx?__JobID=14322

Or see the careers section of www.hdrinc.com and browse for job number 101769



International Right of Way Association – Chapter 67 – Orange County, California

REGISTRATION FORM

IRWA Chapter 67 Spring Seminar: MOBILE HOME ACQUISITION AND APPRAISAL

May 10, 2011

Holiday Inn Express
2726 S. Grand Avenue
Santa Ana, California 92705

Name: _____
Company: _____
Address: _____
City, State: _____
Telephone: _____ Fax: _____
Email: _____

IRWA Membership No.: _____

Credit desired (please circle): **MCLE** **OREA** **SR/WA**

Seminar and Luncheon Fee

\$75 IRWA members pre-registered (\$85 for IRWA members within 2 weeks before seminar)
\$85 Non-members pre-registered (\$90 for non-members within 2 weeks before seminar)

Make checks payable to **IRWA Chapter 67** and mail by May 4, 2011, to:

Kirsten Bowman
Richards, Watson & Gershon
P.O. Box 1059
Brea, California 92822-1059
(714) 990-0901
(714) 990-6230 (fax)

For more info contact: kbowman@rwglaw.com



International Right of Way Association – Chapter 67 – Orange County, California

AGENDA

TIME		SPEAKER
8:00 a.m. - 8:45 a.m.	Registration	
8:45 a.m. - 9:00 a.m.	Introduction and General Announcements	Kirsten R. Bowman, Esq. Richards, Watson & Gershon
9:00 a.m. - 10:00 a.m.	Mobile Home – Appraisal Issues Fixtures & Equipment	John P. Neet, MAI Richard Crockett Crockett & Associates
10:00 a.m. - 11:00 a.m.	Relocation Assistance	Elwood Hampton Caltrans – District 8 Michelle Folk, SRWA Overland, Pacific & Cutler
	Mobile Home – Resolving Conflicts in Local, State and Federal Law	Kirsten R. Bowman, Esq. Richards, Watson & Gershon Amy Greyson, Esq. Richards, Watson & Gershon
12:00 p.m. - 1:00 p.m.	Lunch Relocation & Valuation Issues State Route 210 Project in San Bernardino	Elwood Hampton Caltrans – District 8 Mike Romo County of Riverside
1:00 p.m.	Closing Remarks	Kirsten R. Bowman, Esq. Richards, Watson & Gershon Michele Folk, SRWA Overland, Pacific & Cutler

Holiday Inn Express
 Santa Ana, California
 May 10, 2011



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.

\$100 Discount Coupon
Redeemable for IRWA Chapter 67
Course Tuition Discount

Must Be a Member of Chapter 67
And Attend Three Luncheon Meetings

President's Initials

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Expires 12/11