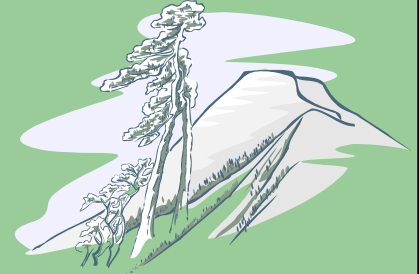


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SIERRA NEVADA CHAPTER 46
INTERNATIONAL RIGHT OF WAY ASSOCIATION



The Zephyr



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New Officers Installed for 2008-2009

Photos by Frank Borghetti



New officers sidle up to George Wilkerson who officiated the installation



*From left to right:
Dana Abney, Kelly Hirning, John Dyer, Patti Espin*

Chapter 46 celebrated the installation of its 2008-2009 officers on May 21, 2008 at a special luncheon meeting at Sierra Pacific Power Company. George Wilkerson, Past President of both Chapter 45 and the International Right of Way Association did the installation honors.

Long time Chapter 46 Education Chair, Dana Abney, SR/WA is our new President. Kelly Hirning is our Vice-President and such an enthusiastic IRWA member that she's taken on the V.P. duties in addition to those of assistant newsletter editor. John Dyer has stepped up to the office of Secretary for the second non-consecutive term and has always been one of Chapter 46's most reliable supporters. Patti Espin, SR/WA is assuming the duties of Treasurer for the second term in a row as it was agreed by all that a one-year term in that office is disruptive to our book keeping. We really need continuity to maintain good financial records.

The upcoming year promises to be an exciting one, with interesting speakers, IRWA courses and fun social events. Be sure to attend our monthly membership meetings to stay informed about the many things our IRWA Chapter offers its members.

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CERCLA and Environmental Liability

Why do We Conduct Phase I Environmental Site Assessments?

By John Dyer, RG, CEM

The Phase I Environmental Site Assessment (Phase I ESA) is a risk management tool, often unfavorably perceived as a delay, a cost and a general nuisance in the property acquisition process.

So why are they done and what is their value? A little history is in order and a look at a major piece of federal legislation.

Love Canal, Niagara Falls, New York

Love Canal of New York entered the public awareness in 1978. At that site, extremely toxic chemicals were buried by the Hooker Chemical Company from 1942 to 1953 in an unused canal. Hooker reluctantly sold the land to the City of Niagara Falls, with clear disclosure of the hazards. The barrels of waste chemicals were rediscovered during construction for a school and utilities in the mid 1950s. However, the impact of the chemicals was not realized



until 1978 when residents of the overlying neighborhood linked the toxic wastes to chronic sickness and birth defects.

Love Canal was, however, just the poster child of many such sites representing unregulated chemical disposal. The neighborhood of Love Canal, and the nation thereafter, found that chemical wastes were more voluminous and far more toxic than ever imagined. It became abundantly clear that there were no controls over where such wastes had been disposed, and no accountability for damaging consequences.

CERCLA

Due to Love Canal, and other sites like it, Congress enacted the Comprehensive Environmental Response, Liability and Cleanup Act (CERCLA) of 1980, commonly called "SuperFund." CERCLA established a fund for cleanup of abandoned and contaminated sites, new definitions of hazardous substances (not just wastes), and Draconian lines of responsibility. The actual SuperFund monies were raised by way of a chemical tax as a means of connecting cleanup costs to the chemical industry, rather than to general public taxes. Liability was defined to be strict, joint and shared, casting a wide net over all involved parties, even those only marginally responsible. The intention was to provide a means of identifying any and all responsible parties, in the hope that enough of them would be sufficiently financially healthy to fund the clean-up, so that public tax money would not need to be used. Several significant issues arising from the initial legislation required many years of litigation and much additional legislation – a process that still continues. Three of these issues were the on-going funding for sites with no solvent responsible parties, the proportion of liability compared to the percentage of participation in the contamination process, and the degree of clean-up required.

CERCLA in Our Lives

The general public feels the impact of CERCLA and the issue of liability for hazardous substances during property acquisition, in permitting requirements for all federal and many public projects, in the tax burden of public agencies responsible for oversight of the remediation of hazardous waste release sites, and in the tax burden of public funding for clean-ups where

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there are no identified, solvent and accessible responsible parties. As a business obtaining a loan, or businesses pursuing a merger or an acquisition, or in the development of a public project, CERCLA manifests itself in the task called the Phase I ESA, or Environmental Due Diligence. The Phase I ESA process evaluates environmental conditions on real estate, enables a business decision to be made as to whether to pursue the acquisition/merger, and helps identify the liable parties for hazardous substances.



The Three Issues

Unfortunately, the chemical sales tax did not even begin to fund cleanups. Public tax money was used to supplement the sales tax funds, but still there wasn't nearly enough money.

Due to the onerous risk of becoming a responsible party, even by being no more than a lender or investor, or as a very minor contributor to a hazardous waste site, properties with any suspicion of contamination were avoided, and lost all value without further review. Many properties were abandoned, sometimes picked up by unsuspecting speculators or by public entities in lieu of back taxes. They often became the primary responsible party. Major corporations mothballed old industrial properties rather than risk initiating any site activities and a hazardous finding. Many industrial areas of cities became untouchable for redevelopment. Lenders avoided lending on suspect properties or portfolios with little knowledge of actual site conditions.

A key factor in the high costs of clean up was the insistence by the U.S. EPA of cleanup to previously existing conditions (i.e. background). This was prohibitively expensive and rarely possible. This drove the risk aversion reaction to extremes.

Thus, CERCLA created major disincentives that threatened to significantly curtail property development and investment, and to not meet the purpose of preventing and cleaning up hazardous sites.

Landowner Liability Defenses under CERCLA

CERCLA provided one means of landowner liability protection (LLP), called the Innocent Landowner Defense (ILD). By conducting environmental due diligence, a prospective purchaser or landowner could avoid liability for contamination identified prior to purchase. Due to several uncertainties and undefined terms in the ILD, additional defenses were provided in modifying legislation, most importantly the Small Business Liability Relief and Brownfields Revitalization Act (Brownfields Amendments) in 2001.

The additional defenses include the Bonafide Prospective Purchaser defense (BPP) and the Contiguous Property Owner defense (CPO). Brownfields also, finally, defined a key term, All Appropriate Inquiry (AAI).

Innocent Landowner

The key element of this defense is that the purchaser establishes that he did not know and had no reason to know that contamination existed on the property at the time of acquisition. To qualify, the party must have conducted AAI on or before the date of purchase. The AAI must not have resulted in knowledge of any contamination. However, CERCLA did not identify the details of the AAI process. Industry nevertheless conducted Environmental Site Assessments prior to property acquisition and prior to the definition of AAI in the hope of establishing a presumption of innocence.

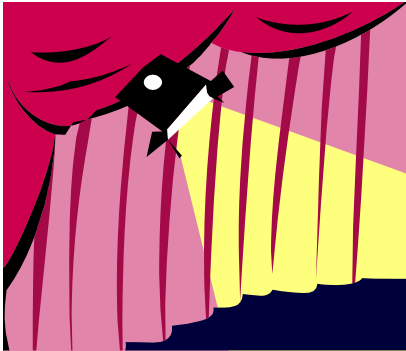
All Appropriate Inquiry

“All appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice” is the first essential element to qualify a party to a commercial real estate transaction for protection from CERCLA liability. AAI was not defined until the Brownfields Amendments legislation of 2002, and further described in regulations promulgated in November, 2006. Until then, the question of adequate completion of AAI was largely a matter left to the courts, via litigation on a case by case basis. Now, a party could more comfortably assume they had conducted defensible environmental due diligence.

Bonafide Prospective Purchaser

A party purchasing adjacent property to a contaminated site must have conducted AAI to claim liability protection. In this case, knowledge of contamination resulting from the AAI process does not preclude this LLP, unlike the ILD. Rather, the

(Continued on page 7)



Sierra Nevada Chapter 46

"Member in the Spotlight"

by Kelly Hirning

This issue of *The Zephyr* is featuring **Patty Paulson, SR/WA, founder of Property Specialists, Inc.**



"Alpha Mare"

Patty was born October 8th, in Long Beach, California, the younger of two girls, to Walter and Texas Myers. Her parents were really interesting people; her dad loved to joke, tell stories and make people laugh and her mother was always a happy woman. Her parents loved to dance.

They were always active with the neighborhood children, teaching them all how to play baseball. Patty's dad, worked as an Arrowhead Puritas Water salesman. He moved from Oregon to Long Beach to attend management training and eventually worked as an instructor until his death. He was great with people and loved his work.

Patty attended David Starr Jordan High School, cruising up and down the Pacific Coast Highway and listening to the Beach Boys in her MG Midget. She had plenty of hot dates at Disneyland and was definitely part of the iconic surfer era. She went on to college at Long Beach City College where her major was Computer Programming. By the time she graduated, however, what she had learned was already obsolete and she knew it wasn't what she wanted to do anyway. It was too boring! Patty knew she needed to work at something more people oriented. At this time, she was reunited with her childhood "boy next door," just home from Vietnam. His name was Bill Paulson. They married and spent ten months in Barstow while Bill finished serving his military duty in the Marine

Corps. After he got out of the Marines, they returned to Long Beach and Bill joined the Los Angeles Sheriff's Department. Patty and Bill had two children, Michelle and Bret, but they eventually divorced and Patty and the children moved to Phoenix, Arizona.

In Arizona, Patty was working for an electronic components sales company in Customer Service. Knowing she wanted more in her career she acquired her Arizona State Real Estate License. Then Patty began to dig her heels in. In 1981 she went to work for Southwest Right-of-Way Services, which was the only right-of-way consultant in the area at that time. The company was founded by two former Arizona Department of Transportation employees. She was immediately exposed to many aspects of right-of-way work. Patty became a member of the American Right of Way Association in 1981 and attended her first conference in 1982 in Reno, at the MGM Grand Hotel. Patty was awe-struck by the conference. Her employers continued to support her education by sending her to all the right-of-way courses that were offered in their area. Soon she became involved in an eight year project with Maricopa County Flood Control District where she did a variety of relocations and acquisitions. Patty also worked for the Maricopa County Highway Department doing relocation and negotiations and for the City of Scottsdale in their Property Management Department.

As the project manager on a huge project at McCarran International Airport, she was commuting from Phoenix to Las Vegas on a weekly basis. At that point, the owners of SWRWS began experiencing a variety of problems that were affecting the business. In 1990 Patty started **Property Specialists, Inc. (PSI)** and a buyout of the McCarran project was arranged



with the assistance of the Director of the McCarran International Airport. She was provided a furnished office and equipment at the airport. The project took nearly 13 years to complete. In 1993, Reno-Tahoe Airport Authority (RTAA) contacted McCarran International Airport requesting a reference for right-of-way assistance and was given Property Specialists' name. PSI won the contract bid and began providing complete project administration services to the Reno Airport. Patty started commuting to Reno on a regular basis, and after two years of commuting she realized she had fallen in love with the area and decided Reno is where she wanted to "relocate" her corporate office.

Property Specialists, Inc. has developed strong roots in the Reno/Sparks area. PSI continues to provide a wide range of acquisition and relocation services for RTAA and currently has contracts with the City of Sparks, the Redevelopment Agency of City of Sparks, Carson City Public Works, Sierra Pacific Power Company, the City of Fernley, South Lake Tahoe and Washoe County's Truckee River Flood Management Project. PSI has also worked on projects with the City of Reno, including the Reno ReTRAC project, NDOT, for projects all over southern Nevada, and in California and Arizona as well.

Patty and the PSI team are very knowledgeable about federal requirements and regulations as well as state laws in Arizona, Nevada and California, regarding land acquisitions and relocation assistance. Patty does a great job at protecting her clients as well as being very knowledgeable about how to help people who must be moved from their property to new locations.

Patty has been very supportive of the IRWA. Coming from Chapter 28 in Phoenix, she's now an active member of our local Chapter 46. She has held officer and chair positions as well as maintaining IRWA membership for her key employees. She will always be the first to take advantage of a networking opportunity. She is an enthusiastic attendee and supporter of our meetings and social events. She continually contributes to every charitable cause that comes her way throughout the year. Patty is a supportive employer and is very compassionate toward her employees. She is always upbeat, positive and professional. Her laugh is contagious.

When I returned from my interview with Patty I opened my email to find a message from a fellow Chapter 46 member, Lori Jenkins, who works in Patty's office:

"Patty has been an officer in IRWA a number of times and really believes in the power of networking with people, and she is a huge advocate for the displacee and does a great job of representing the agency or client she represents in protecting them by following the Federal Regulations. She runs the show at our office like an "alpha mare" with humor and with strong direction, but with a benevolent hand that ultimately benefits all of those involved in the process. She is the first to give to the less fortunate all year through, not just at holidays. Patty seems to live what she believes and that is admirable."

Chapter 46 has a new SR/WA!



Patti Espin received official notification on July 10, 2008, that she has been approved by the IRWA as SR/WA #5670. Ms. Espin is a Right of Way Agent I for Sierra Pacific Power Company and has been in her current job for two and a half years.



Message from the President

By Dana Abney, SR/WA



Welcome back to another year of Chapter 46 news and education. As your new chapter President, I'd like to introduce the rest of the officers: Kelly Hirning, TMWA - Vice-President; Patty Espin, SPPC – Treasurer; and John Dyer, AMEC - Secretary. Our Education Chair is Laura Sheline, SPPC, Membership Chair is Doug Dubois, TRFP, and Webmaster & Newsletter Chair is Carol Buononoma, Washoe County. Thank you to all these volunteers for their time and commitment to forging a strong and functional team!

At the IRWA Annual Conference in Austin, Texas, last June (which was a smashing success!), several goals emerged as focal points for the coming year. First, we asked for and received approval to increase the number of classes presented by Chapter 46 from four to six per year. This is our opportunity to offer a wider variety of classes, to give our members support toward their SR/WA, and to bring money and visitors to our chapter. With budget constraints affecting both private companies and public agencies, take advantage of these local classes to earn Continuing Education credits and/or work toward advanced certificates. Check to see what you need to achieve a designation or re-certify.

Second, following one of International's major strategies to "*develop a diverse community and network of empowered stakeholders within the right of way profession*", we should all strive to increase our chapter's membership. Ask a colleague to one of our lunches! Show them what we do, how we do it, and broadcast what right of way is all about. How many times have you received a blank stare when you tell someone you

are a right of way agent? This is a fun and interesting career; lets introduce ourselves to others and bring them in.

Third, Region 1 has committed to re-activating the Hawaii Chapter. Because they are so far away, it has been difficult for their members to attend mainland functions and classes. Our very own Region 1 Chair, Carolyn Carrica, SR/WA, is head of the committee to put on the Fall Forum in Oahu in October, to bring the IRWA within their reach. Various chapters throughout the region have volunteered to coordinate a class, organize a get-together, and facilitate the business meeting. Hard duty! But, with the purpose to let the Hawaiians know that they are valued members of this organization. So, how would you go about valuating a smoking-hot, lava-covered easement...? And how do you propose to run utilities through a pineapple plantation? New questions, new solutions, always interesting – let us give them all the support we can.

Finally, I leave you with the Vision Statement of this organization – "*The International Right of Way Association will be the worldwide leader for innovation and excellence in the acquisition and management of right of way and public use infrastructure.*" Ambitious? Yes, but well within our grasp – we are Right of Way agents!

See you all at the General Meeting Lunch on Wednesday, September 17th, at SPPC.

Dana D. Abney, SR/WA



(CERCLA and Environmental Liability Continued from page 3)

Meeting Dates

Board	September 4 2008
Membership	September 17 2008
Board	October 2, 2008
Membership	October 15, 2008
Board	November 6, 2008
Membership	November 19, 2008
Board	December 4 2008
Membership	December 17, 2008
Board	January 8, 2009
Membership	January 21, 2009
Board	February 5, 2009
Membership	February 18, 2009
Board	March 5, 2009
Membership	March 18, 2009
Board	April 2, 2009
Membership	April 15, 2009
Board	May 7, 2009
Membership	May 20, 2009



previous owner retains all obligations for the site conditions preceding the title transfer, and the new owner accepts property use limitations consistent with the site conditions.

Contiguous Property Owner

AAI must have been conducted prior to acquisition of a parcel adjacent to a contaminated property. As for the ILD, the party must be able to establish that the party did not know and had no reason to know that contamination on the adjacent affected the property to be acquired at or prior to the time of acquisition.

Liability Protection Summary

By diligently conducting the Phase I ESA process, a party obtains reasonable assurance of liability protection. Just as important, a good due diligence effort does not fail to discover and disclose significant environmental conditions, allowing a well-founded decision to be made, whether to proceed or not. Often the findings become, rather than a road-block, a part of negotiations over actual property value and division of responsibilities. The desired outcome is thus achieved—a quality environmental document, and a proper decision regarding if and how to proceed. Ironically, and happily, another outcome is achieved: The LLP is, although available, unlikely to be needed, since undisclosed environmental conditions are now unlikely to be discovered.

And remember, dear readers, who may be disgruntled at the costs, delays and nuisance of the Phase I ESA process, the cheapest and best effort is the one done right the first time. Accomplish this through a quality based selection process for the consulting services, then negotiate costs. It is still as true now as ever — any vender can be a low bidder, but only a precious few can be the best. Less than the best can be very expensive indeed.

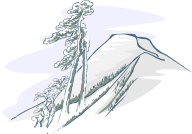


The next membership meeting will be on September 17, 2008 at Sierra Pacific Power Company. Our speaker will be Glen Armstrong of U.S. Geomatics. See you there!

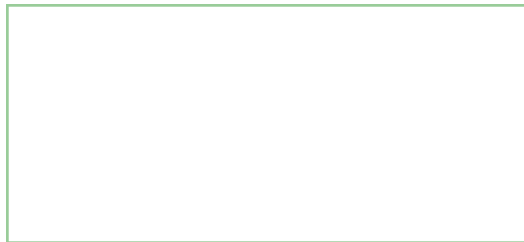
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