Mr. .... ____   April 30, 1979

Robert D. Milam

Classification of Gas Stored in Dry Wells

        You asked Glenn Rigby for an opinion whether gas
stored in a dry well is real property or personal property.
Glenn asked that I reply to your question. Our opinion is
that such gas is personal property and not minerals as defined
in Section 104 of the Revenue and Taxation Code and Property
Tax Rule 121.

        Our analysis of this problem begins with the definition
of real property in section 104. This section provides that
minerals in the land are real property. Rule 121 interprets
this section as applying only to unextracted mineral products.
Since the gas, about which you ask, has been extracted at one
time it cannot become "unextracted" merely by putting it in a
dry well.

        One possibility is that if gas is extracted at one
place and put into the ground at another and at the second
place is allowed to merge with unextracted gas existing there,
it may be treated as unextracted because of the impossibility
of determining whether it was there already or put in later.

        In addition, we can see no distinction between storing
gas in containers above the ground, in dry wells below the
ground, or in pipelines in the ground. In each case it seems
to us that the classification of the gas would be as personal
property.

        The Valuation Division, in appraising gas supplies of
public utilities, in general treats gas stored in dry wells as
personal property. However, they do treat "cushion gas" as
land. As I understand it, cushion gas is a certain unit of gas
that cannot be extracted from storage because it would reduce the
pressure in the storage place so that it becomes more difficult
to take out the stored gas. You may want to consider this if
the dry well is to be continuously used as storage area. I don't

think it should be considered for a dry well storage area that will not be continuously in use. The reason for this conclusion is that if it is not continuous storage there is no reason to keep the cushion gas there. It is not unextractable, it is only left there for purposes of continuous storage.

RDM:fr