

## Memorandum



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To: Mr. Steven Spears  
Legal Counsel - MIC:78

Date: September 15, 1994

From: E. L. Sorensen, Jr.  
Chief Counsel

Subject: Kern River Gas Transmission Company and Mojave Pipeline Company

This is in response to your request (relayed by John Hagerty on 9/12/94) for a written explanation of the advice provided to the Valuation Division by Richard Ochsner and Ken McManigal regarding the 1993 assessment of the above companies.

In prior years, Kern River and Mojave were assessed as intercounty pipelines. As a result of the court decision which determined that the Board's assessment jurisdiction did not include pipeline land and rights-of-way, the Board removed the land values from the 1993 pipeline assessments, including Kern River and Mojave. As we understand it, neither Kern River nor Mojave appealed the Board's 1993 assessments. In 1994, after review of the applicable authorities, the Board assessed Kern River and Mojave as regulated companies transmitting or selling gas. As a result, the Board's 1994 unitary value included the land and rights-of-way which were excluded in 1993.

By letter dated June 7, 1994, Gene Mayer advised the Kern County Assessor that Kern County should not assess the 1994 value for the Kern River and Mojave land and rights-of-way since those values were being picked up in the Board's 1994 unitary assessment. The letter also indicated that the staff was considering recommending that the Board enroll an escape assessment for the 1993 value of the land and rights-of-way. The amount of the escape would be the amount by which the original 1993 pipeline values were reduced to reflect the court decision. In a letter dated August 4, 1994, the Kern County Assessor objected to the staff's proposal to reassert assessment jurisdiction over the 1993 land and right-of-way value since the Assessor considers the Board's valuation to be inadequate.

Richard Ochsner and Ken McManigal met in early August with Valuation Division staff to discuss the question of the escape assessments. Richard and Ken expressed concern that the Board

would not be able to defend its jurisdiction to make the escape assessments for 1993 under the described circumstances. Their advice was based on the fact that the Board's 1993 pipeline assessments of Kern River and Mojave were final, and the Board lacked administrative jurisdiction to make further changes to those assessments. Although the Board does have authority to assess property which escaped assessment, no escape occurred in this case since the original assessments were made on the basis that these were pipeline properties and, accordingly, the Board's jurisdiction did not include land and rights-of-way.

It should be noted that the Board's assessment jurisdiction, as provided in section 19 of Article XIII of the California Constitution, requires annual assessment of two types of property. The first category refers to intercounty "pipelines, flumes, canals, ditches, and aqueducts". The courts have made clear that the Board's jurisdiction extends only to the described property and not to all of the property owned or used by the company owning the pipeline, flume, etc. The Board is also required to assess a second category of property owned or used by various regulated utilities including companies transmitting or selling gas. This category includes all property owned or used by the described company. Thus, the Board's assessment jurisdiction is divided into two distinct and separate categories.

The Board assessed the Kern River and Mojave properties as pipelines in 1993. Since neither Kern River nor Mojave filed petitions objecting to the Board's assessment, those assessments became final when the time for filing a petition for reassessment expired. See Revenue and Taxation Code section 733. There are no provisions in either the Constitution or the Revenue and Taxation Code which now permit the Board to disturb those assessments. The Board's jurisdiction in the matter ceased when the assessments became final.

Revenue and Taxation Code section 861 requires the Board to assess property it finds to have escaped assessment. Unfortunately, since the Board's 1993 assessment was made on the basis that Kern River and Mojave are pipelines, the pipeline land and rights-of-way are beyond the Board's assessment jurisdiction and, accordingly, there was no escape for which an assessment can be made. We understand that the Kern County Assessor has assessed the land and right-of-way for 1993 and this is not a situation, therefore, where assessable property has fallen through the cracks in the system.

Mr. Steven Spears

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September 15, 1994

I hope the above information is helpful to you in understanding the basis in which Richard and Ken provided their advice to the Valuation Division. Please contact either Richard or Ken if you have any questions regarding this matter.

*by Richard Ochsner*

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cc: Mr. Burt Oliver - MIC:73  
Mr. John Hagerty - MIC:63  
Mr. Gene Mayer - MIC:61  
Mr. Octavio Lee - MIC:61  
Mr. Richard Ochsner  
Mr. Ken McManigal

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## M e m o r a n d u m

To : Mr. John Hagerty  
MIC:63

Date: June 24, 1993


From : Ken McManigal

Subject: Board Assessment Jurisdiction Over Pipeline Land and Land Rights

This is in response to your June 24, 1993, memorandum to Richard Ochsner concerning the applicability of Southern Pacific Pipe Lines, Inc. v. SBE, 14 Cal.App.4th 42, to Board assessment jurisdiction of pipelines, etc.

As you know, Article XIII, Section 19 of the California Constitution provides that the Board shall annually assess (1) pipelines, flumes, canals, ditches, and aqueducts lying within two or more counties. The pipeline portion of Article XIII, Section 19 was the subject of the 1936 General Pipe Line Company v. SBE, 5 Cal.2d 253, case, which dealt with Board assessment of an intercounty oil pipeline used for private purposes and which set forth a definition of "pipeline" for such purposes. Southern Pacific Pipe Lines, Inc. v. SBE, supra, dealt with similar pipelines, that definition, and the question as to whether "pipeline" for purposes of Article XIII, Section 19 included or should include pipeline lands and rights-of-way. The Court of Appeal concluded it did not.

While the above cases involved oil pipelines, primarily if not exclusively, in concluding that "pipeline" as used in Article XIII, Section 19 did not include pipeline lands and rights-of-way, the Court of Appeal did not, limit the scope of its decision to oil pipelines. Rather, for pipeline properties assessed under Article XIII, Section 19 as pipelines, pipeline lands and rights-of-way were excluded. Thus, we confirm the understanding that the Court of Appeal's decision is to the effect that the Board has no jurisdiction to assess pipeline lands and rights-of-way, irrespective of whether the pipeline is a common carrier or proprietary and irrespective of whether the pipeline transports oil, gas, or water; and that the decision does not pertain to flumes, canals, ditches, or aqueducts.

  
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cc: Mr. Richard Ochsner  
Mr. Gene Mayer - MIC:61  
Mr. Harold Hale - MIC:61  
Mr. David Hendrick - MIC:61

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