



California Fair Political Practices Commission

August 4, 1986

C. T. Swallow
Deputy City Attorney
1501 Truxtun Avenue
Bakersfield, CA 93301

Re: Your Request for Advice
Our File No. A-86-229

Dear Mr. Swallow:

Thank you for your letter requesting advice on behalf of Bakersfield Planning Commissioner Ty Stillman concerning his duties under the conflict of interest provisions of the Political Reform Act.^{1/} This letter confirms the telephone advice I provided to you and Mr. Stillman on July 29, 1986.

QUESTION

Mr. Stillman's employer is an oil and gas company which is a partial owner of two oil wells within the City of Bakersfield and which has recently bid on four other wells within the City. The company has also submitted comments on a Draft Environmental Impact Report concerning oil drilling in the southwest portion of Bakersfield. Mr. Stillman assisted in the preparation of these comments.

You have asked whether Mr. Stillman may participate in either of the following Planning Commission decisions:

1. A decision concerning the adequacy of the Draft Environmental Impact Report.
2. Discussions and decisions concerning a city-wide ordinance regulating oil drilling within the Bakersfield City limits.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

CONCLUSION

Mr. Stillman is required to disqualify himself from participating in both the decision concerning the adequacy of the Draft Environmental Impact Report and the discussions and decisions concerning the city-wide ordinance regulating oil drilling.

ANALYSIS

Initially, we must remind you that this advice is provided only with regard to Mr. Stillman's future conduct. The newspaper articles you provided with your letter included information concerning allegations that Mr. Stillman has, as a member of the Planning Commission or its subcommittees, previously participated in discussions concerning the regulation of oil drilling in Bakersfield, and that such participation was prohibited by the Act. We make no comment as to Mr. Stillman's past conduct; this letter concerns only the upcoming discussions and decisions of the Planning Commission and its subcommittees, and whether Mr. Stillman may participate in those discussions and decisions.

In 1985, the City of Bakersfield enacted an ordinance requiring every oil well drilled within the City to obtain a conditional use permit from the Board of Zoning Adjustment. This ordinance was enacted in response to concerns for public health and safety as a result of oil drilling near residential areas. Bakersfield is the largest city in Kern County, and the principal residential, business and employment center for the oil industry in Kern County. More than 80 operating oil companies are doing business in the Bakersfield metropolitan area, portions of seven major oil fields are located within the Bakersfield city limits, and more than 350 operating wells are located inside the city limits. The ordinance enacted in 1985 was a preliminary attempt to deal with the problems posed by oil development within urban and residential areas.

Shortly after the enactment of this ordinance, it became clear to the City planning staff that a major oil field was located in a residential section of the southwest portion of the City. The applications for conditional use permits in that southwest area had become so numerous that the City staff decided a comprehensive study and environmental impact report regarding the oil field area (approximately 10 square miles) was necessary, rather than considering each well separately. A Draft Environmental Impact Report (EIR) concerning the southwest area has been prepared and submitted to the Planning Commission.

The City has also been developing a city-wide comprehensive ordinance that would allow the development of oil wells within Bakersfield without the requirement for a conditional use permit and without causing undue discomfort to, or threatening the safety of, the residents of the City of Bakersfield. Work on this comprehensive ordinance was suspended until the completion of the EIR for the southwest area. This decision to suspend work on the city-wide ordinance was made because the EIR for the southwest area would, by necessity, address the problems of oil development next to residential housing and would determine methods of mitigating the noise, unattractive appearance, and hazards which may impact upon residents of areas surrounding oil wells. Adoption of the city-wide ordinance will require an additional environmental impact analysis; however, the City staff expects that the study and results of the EIR prepared for the southwest oil field area could be utilized as authority in reviewing the environmental impact of the city-wide ordinance.

It is the responsibility of the Planning Commission to review environmental impact reports for adequacy, including any mitigation measures that may be required to avoid adverse impact to the environment. It is also the responsibility of the Planning Commission to review proposed zoning ordinances. Hearings are held before the Planning Commission regarding such reports and ordinances. The Planning Commission then submits its recommendations to the City Council or to the Board of Zoning Adjustment, as required.

Mr. Stillman is employed by and owns stock in Nahama & Weagant Energy Company, a publicly traded California Corporation whose primary business activities are related to the drilling for and production of oil and gas throughout California. Mr. Stillman has informed us that Nahama & Weagant stock is traded on an over-the-counter exchange (he indicated that it is probably traded on the Western over-the-counter exchange, and it is not listed on the National Association of Securities Dealers National Market List). Mr. Stillman also informed us that Nahama & Weagant is one of the largest locally owned oil companies in the Bakersfield area. As such, Nahama & Weagant is often asked to provide information or opinions regarding local issues which would affect the oil industry. Mr. Stillman is Manager of Lands and Governmental Affairs for Nahama & Weagant. His duties include the planning and supervision of lease acquisition programs, administration of contracts and contract negotiations, coordination with various federal, state, and local regulatory agencies, and public representation of company positions and concerns at various state and local public hearings.

Nahama & Weagant owns no oil wells in the southwest area of Bakersfield, but it does own 25 percent of two wells located within a different area which was recently annexed by the City of Bakersfield. Both wells are shut-in, one since February 1986, and the other since July 1, 1986. The start-up costs to resume operation of a shut-in well are substantial; therefore, it is unlikely that Nahama & Weagant will decide to resume operation of the wells for commercial production of oil. The total costs of abandoning both wells would probably be between \$20,000 and \$30,000. State law requires that a well which has been shut-in for two years shall be abandoned.

After we received your letter, Mr. Stillman informed us that Nahama & Weagant has submitted a bid to acquire 10 additional oil wells, four of which are located within the City of Bakersfield, although not in the southwest portion. Mr. Stillman stated that he was not aware of the company's interest in acquiring these wells when you wrote your letter, and that he was informed of the company's bid only after it had been submitted.

Mr. Stillman also informed us that, although it has no oil wells in the southwest area, Nahama & Weagant has submitted comments to the Planning Commission regarding the Draft EIR for the southwest portion of the City. These comments were signed by the Vice-President and General Manager of Nahama & Weagant. However, Mr. Stillman stated that he had participated in meetings at the company during which these comments were discussed, because his field of expertise is the preparation and analysis of environmental impact reports. You have indicated that you were not aware of Mr. Stillman's assistance in the development of Nahama & Weagant's comments on the Draft EIR at the time you wrote the letter requesting advice, so your letter did not include this information.

Section 87100 prohibits a public official from making, participating in, or using his official position to influence any governmental decision in which he knows or has reason to know he has a financial interest. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on, among other interests:

1. Any business entity in which the official has a direct or indirect investment worth \$1,000 or more.
Section 87103(a).

2. Any source of income aggregating \$250 or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made. Section 87103(c).

3. Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management. Section 87103(d).

Mr. Stillman is a public official due to his membership on the Planning Commission. Section 82048. Activities such as voting on a decision before the Planning Commission, participating in discussions or deliberations regarding the decision, or conferring with other members of the Planning Commission, subcommittees of the Planning Commission, or City planning staff are considered "making," "participating in," or "attempting to influence" a governmental decision. 2 Cal. Adm. Code Sections 18700 and 18700.1.^{2/} Mr. Stillman has an investment worth \$1,000 or more in, receives \$250 or more in income from, is employed by and is a manager of, Nahama & Weagant. Accordingly, your question is whether it is reasonably foreseeable that the decisions before the Planning Commission concerning the Draft EIR and the city-wide ordinance would have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on Nahama & Weagant.

The Commission discussed the issue of "foreseeability" in the Thorner Opinion, 1 FPPC Opinions 198 (No. 75-089, Dec. 4, 1975). In general, there must be a substantial likelihood that a material financial effect will occur, rather than a mere possibility of such an effect, nor does it require certainty.

In general, the reasonably foreseeable effect of a decision will be considered material if it is "significant." Regulation 18702(a) (copy enclosed). The Commission has also adopted more specific guidelines regarding materiality. These guidelines differ depending on the type of economic interest held by the public official. Mr. Stillman's economic interests with regard to Nahama & Weagant are income, employment, and investment. We will first discuss the guidelines for determining whether the effects of a decision on a source of income are material.

^{2/} Regulations 2 Cal. Adm. Code Sections 18000, et seq., all references to regulations are to Title 2, Division 6 of the California Administrative Code.

Commission Regulation 18702(b)(3) sets forth the applicable materiality standards in the case of a source of income of \$250 or more. Regulation 18702(b)(3)(B) is particularly relevant to your question. It provides that the effect of a decision will be considered material if "there is a nexus between the governmental decision and the purpose for which the official receives income." In other words, this regulation prevents Mr. Stillman from accomplishing as a public official that which he is paid to do as an employee of Nahama & Weagant.

Part of Mr. Stillman's duties as an employee of Nahama & Weagant is to assist the company in analyzing the adequacy of environmental impact reports, such as the Draft EIR concerning oil exploration and development in the southwest portion of Bakersfield, for the purpose of providing public comments on those reports. Any actions he would take on the Planning Commission in connection with assessing the adequacy of the environmental impact reports which he has analyzed for Nahama & Weagant could foreseeably further the interests of Nahama & Weagant. There would therefore be a nexus between his actions on the Planning Commission and his duties as Manager of Lands and Governmental Affairs for Nahama & Weagant. Similarly, if Mr. Stillman's job at Nahama & Weagant involves any analysis of the comprehensive city-wide ordinance for the purpose of influencing decisions on that ordinance, there would be a nexus between his actions on the Planning Commission and his duties as an employee of Nahama & Weagant.

Mr. Stillman has informed us that he did assist Nahama & Weagant in preparing its comments on the Draft EIR for the southwest area of the City; accordingly, we conclude that the decisions on the Draft EIR will have a reasonably foreseeable material financial effect on Nahama & Weagant. We have not inquired as to whether Mr. Stillman has been involved in analyzing proposals for the comprehensive city-wide ordinance on behalf of Nahama & Weagant. However, Nahama & Weagant has an interest in oil wells which could be directly affected by the decisions on the city-wide ordinance. Although Nahama & Weagant has no oil wells in the southwest area, it prepared comments on the Draft EIR for that area. Consequently, we think that Nahama & Weagant's desire to provide input on the city-wide ordinance will be equal or greater than its interest in commenting on the Draft EIR for the southwest area. In light of Mr. Stillman's expertise in environmental analysis and his previous involvement in the preparation of comments on the Draft EIR, we think that Nahama & Weagant would ordinarily expect Mr. Stillman's assistance in analyzing matters such as the city-wide ordinance. Furthermore, you have indicated that the EIR for the southwest area will probably be used as an

authority in reviewing the environmental impact of the city-wide ordinance. These facts support a conclusion the decisions regarding the city-wide ordinance will have a reasonably foreseeable material financial effect on Nahama & Weagant, although further analysis is necessary before we can reach that conclusion.

On the question of Mr. Stillman's participation in discussions and decisions on the city-wide ordinance, it is also helpful to examine the materiality guidelines which apply when an official has an investment interest in a business entity or is an employee of a business entity which could be significantly affected by a governmental decision. These guidelines are contained in Regulation 18702.2 (copy enclosed). As Nahama & Weagant is a publicly traded California Corporation, the effect of a decision will be considered material if it is reasonably foreseeable that:

- (1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$30,000 or more; or
- (2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$7,500 or more; or
- (3) The decision will result in an increase or decrease in the value of assets or liabilities of \$30,000 or more.

Regulation 18702.2(e).

We do not have specific information concerning the city-wide ordinance and its effect on the gross revenues, expenses, or assets of Nahama & Weagant; therefore, we will not attempt to predict what those effects could be. Generally, however, the facts indicate that the city-wide ordinance could result in Nahama & Weagant incurring additional expenses. You indicated in your letter that one basic policy decision regarding the city-wide ordinance is whether it will apply to wells currently in existence. You stated that, as currently framed, the city-wide ordinance would not apply to existing wells, but if any ordinance as finally adopted imposes any significant requirements upon existing wells, Nahama & Weagant would be compelled by economic necessity to abandon their two shut-in wells sooner rather than later.

Since you wrote your letter, Nahama & Weagant has bid on four other oil wells within the City of Bakersfield. If the company acquires those or any other wells in the City, and the city-wide ordinance applies to existing wells, the burden on Nahama & Weagant as a result of the ordinance would clearly increase. The following excerpt from the comments Nahama & Weagant submitted on the Draft EIR for the southwest area indicates that the decisions concerning the regulation of oil exploration and development could impact severely on mineral estate owners:

The DEIR fails to recognize the legal ramifications of separate surface and mineral estates. Since California Law does not have statutory unitization or pooling provisions, a possible net effect of the mitigation measures recommended in this document may be the defacto elimination of the mineral estate's right to a reasonable use of the surface for the enjoyment of said estate. (Emphasis added.)

While we are not in a position to predict the specific amount of costs which Nahama & Weagant would foreseeably incur as a result of the city-wide ordinance, the facts presented lead us to conclude that there is a substantial probability that those costs would be material. Because of this conclusion, and the connection between Mr. Stillman's duties as a Planning Commissioner and his job as an employee of Nahama & Weagant, our opinion is that discussions and decisions regarding the city-wide ordinance will have a reasonably foreseeable material financial effect on Nahama & Weagant. See generally, Oglesby Opinion, 1 FPPC Opinions 71 (No. 75-083, July 2, 1975.)

Finally, it is necessary to address whether the decisions on the Draft EIR and the city-wide ordinance will affect Nahama & Weagant in a manner that is distinguishable from the effect on the public generally. If the effect of the decisions on Nahama & Weagant is substantially the same as the effect on the general public, then Mr. Stillman would be permitted to participate in those Planning Commission decisions.

In Regulation 18703 (copy enclosed), the Commission has stated that a material financial effect of a governmental decision on an official's interests is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public. The "public," for purposes of this exception to the conflict of interest laws, is the jurisdiction of the

official's agency. Owen Opinion, 2 FPPC Opinions 77 at 81 (No. 76-005, June 2, 1976). Therefore, the question is whether the decisions on the Draft EIR and the city-wide ordinance will affect Nahama & Weagant in substantially the same manner as they will affect all or a significant number of the residents, businesses, and property owners in the City of Bakersfield.

In your letter, you included information concerning the extent to which Bakersfield's economy is linked to the oil industry. On the telephone you stated that oil and agriculture are the two major industries in Bakersfield.

Regulation 18703 provides, that, with specific exceptions, an industry, trade or profession does not constitute a significant segment of the general public. Therefore, unless one of the specific exceptions applies, it is not relevant to this analysis whether the decisions pending before the Planning Commission will affect the oil industry, in general.

The specific exceptions, mentioned above, are as follows:

(a) In the case of an elected state officer, an industry, trade or profession constitutes a significant segment of the public generally.

(b) In the case of any other elected official, an industry, trade or profession of which that official is a member may constitute a significant segment of the public generally if that industry, trade or profession is a predominant industry, trade or profession in the official's jurisdiction or in the district represented by the official.

(c) An industry, trade or profession constitutes a significant segment of the public if the statute, ordinance or other provision of law which creates or authorizes the creation of the official's agency or office contains a finding and declaration, including an express reference to Section 87103 of the Government Code, to the following effect:

The Legislature [or other authority] declares that the individual[s] appointed to the office of _____ is [are] intended to represent and further the interest of the [specified industry, trade or profession], and that such representation and furtherance will ultimately serve the public interest.

Accordingly, the Legislature [or other authority] finds that for purposes of persons who hold such office the [specified industry, trade or profession] is tantamount to and constitutes the public generally within the meaning of Section 87103 of the Government Code.

(d) In the absence of an express finding and declaration of the type described in subsection (c) of this section, such an industry, trade or profession constitutes a significant segment of the public generally only if such a finding and declaration is implicit, taking into account the language of the statute, ordinance or other provision of law creating or authorizing the creation of the agency, the nature and purposes of the program, any applicable legislative history, and any other relevant circumstance.

Regulation 18703(a) - (d).

Regulation 18703(a) applies only in the case of an elected state officer, and Regulation 18703(b) applies only to other elected officials. Therefore, neither exception could apply to Mr. Stillman's situation, because he is an appointed Planning Commissioner. Moreover, the exception in Regulation 18703(b) for a "predominant industry" in an official's jurisdiction does not generally apply when there are numerous industries active in a jurisdiction, even if one industry or employer is the largest of those doing business in the jurisdiction. See, Blegan Advice Letter, No. A-85-176; Jorgenson Advice Letter, No. A-82-214 (copies enclosed). This exception for the predominant industry in the jurisdiction of an elected official most clearly applies to the "company town" situation. See, Holmer Advice Letter, No. A-86-51 (copy enclosed).

Finally, the exceptions in Regulation 18703(c) and (d) do not apply to this situation because members of planning commissions, unlike members of certain other boards or commissions, are not appointed solely to further the interests of a particular industry, trade or profession. You have stated that Mr. Stillman was appointed to the Planning Commission because of his expertise on oil and gas matters; however, the duties and functions of planning commissions have a widespread

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impact on all interests of a jurisdiction, as opposed to impacting specially on one industry, such as the oil industry.^{3/}

Other facts also indicate that the effect on Nahama & Weagant will be distinguishable from the effect on the public generally. Mr. Stillman has informed us that Nahama & Weagant is one of the largest, locally-owned oil companies in Bakersfield. Furthermore, Nahama & Weagant has taken the time and effort to submit comments on the Draft EIR. In order for the "public generally" exception to apply, the effects of the decisions must be substantially the same for a significant segment of the public. In view of the above facts, it is not clear that Nahama & Weagant will be affected in substantially the same manner as other persons, including other oil companies, in the jurisdiction.

Based on the above analysis, Nahama & Weagant would be materially affected by the decisions on the Draft EIR and the city-wide ordinance, and in a manner distinguishable from the effect on the public generally. Therefore, Mr. Stillman is required to disqualify himself from participating in the decisions and discussions concerning the Draft EIR for the southwest area and the comprehensive city-wide ordinance regulating oil exploration and development.

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Very truly yours,



Kathryn E. Donovan
Counsel
Legal Division

KED:plh
Enclosure

^{3/} Regulation 18703(c) and (d) generally apply to boards or commissions which regulate a specific industry, and whose membership must include representatives of the industry. See, Consumers Union of United States v. California Milk Producers Advisory Board (1978) 82 Cal. App. 3d 433.

OFFICE OF CITY ATTORNEY

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July 14, 1986

Robert Lideigh, Esq.
Fair Political Practices Commission
Legal Division
428 J Street, Suite 800
P. O. Box 807
Sacramento, CA 95804-0807

RE: Request for Advice (Ty Stillman, Planning
Commissioner for the City of Bakersfield)

Dear Mr. Lideigh:

The Planning Commission has before it an environmental impact report encompassing a limited portion of the City of Bakersfield. The Planning Commission may also soon be considering the adoption of a City-wide ordinance. Both the environmental impact report and the ordinance will address the issue of oil well drilling and production of oil and gas within the City of Bakersfield. Mr. Ty Stillman is one of seven members of the Planning Commission of the City of Bakersfield. He is also an employee of Nahama Weagant Energy Company, a California corporation ("Nahama Weagant"), a company whose primary business activities are related to the drilling for and production of oil and gas throughout California. Your advice is requested with regard to whether or not Mr. Stillman must disqualify himself from participating in the deliberations and determinations which must be made by the Planning Commission regarding the environmental impact report and the ordinance.

Until sometime in 1985, the City of Bakersfield had an oil overlay zone allowing the drilling for and extraction of oil by means of obtaining a conditional use permit obtained from the Board of Zoning Adjustment. A conditional use permit was not necessary in order to drill in areas zoned agricultural. Beginning sometime in 1984, an oil well named Baron No. 1 owned by Western Continental Operating Co. obtained a substantial amount of publicity. It was located in an agricultural zone but was surrounded by residential areas. Due to various problems at the well and the constant publicity, the City of Bakersfield quickly enacted an ordinance requiring every well drilled within the City to obtain a conditional use permit from the Board of Zoning Adjustment. An ad hoc advisory committee comprised of representatives from the

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Commissioner for the City of Bakersfield)

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oil industry, the development community, residents of the City of Bakersfield, three members of the Planning Commission and a state representative from the Division of Oil and Gas, began meeting in an attempt to come up with a comprehensive ordinance that would allow the development of oil within the City of Bakersfield without the requirement for a conditional use permit and without causing undue discomfort to or threatening the safety of the residents of the City of Bakersfield.

At or about the same time as the meetings regarding the ordinance began, the number of requests for conditional use permits in the southwest portion of the City of Bakersfield had increased to the extent that the staff of the City of Bakersfield became aware that it was looking at a major oil field in a residential area. (At the time, City staff was anticipating as many as forty additional wells.) Rather than requiring individual environmental impact reports for each well, it became clear that a comprehensive study and environmental impact report regarding the oil field area (approximately ten square miles) was needed.

Because it appeared that the environmental impact report and the comprehensive ordinance were scheduled to be completed at approximately the same time, City staff suspended action on the ordinance until the environmental impact report for the southwest portion of the City was completed. This decision was made due to the fact that the environmental impact report in the southwest area would by necessity address the problems of oil development next to residential housing and determine methods of mitigating the noise, unattractive appearance, and hazards which may impact upon residents of areas surrounding oil wells. City staff reasoned that more than likely certain of the mitigation measures which applied to oil wells in the southwest could also be applicable to oil wells located next to residential areas elsewhere in the City. The presently known depth of the oil deposits within the City varies greatly, and there are other major differences between the southwest oil field and other environments within the City. Adoption of a City-wide ordinance governing oil development will require an additional environmental impact analysis; however, it is expected by City staff that the study and results of the environmental impact report prepared for the southwest oil field area could be utilized as authority in reviewing the environmental impact of the the City-wide ordinance.

Approximately two months prior to the date the first draft of the environmental impact report for the southwest area was completed, Mr. Stillman was appointed to the Planning Commission and became a member of the zoning ordinance subcommittee of the Planning Commission. Mr. Stillman has an extensive

background in environmental planning. (See attached resume.) Mr. Stillman was also chosen for his expertise in oil and gas production, an industry which directly affects a major portion of the community of Bakersfield.

The City of Bakersfield is the largest city within Kern County, and metropolitan Bakersfield comprises over one-half of the population of Kern County. If Kern County were a state, it would be the fourth largest oil-producing state in the nation, surpassed only by Alaska, Texas and Louisiana. Three of the five largest oil fields in the forty-eight contiguous states are located in Kern County. As the major urban center, metropolitan Bakersfield is the principle residential, business and employment center for the oil industry in Kern County. Over eighty operating oil companies are doing business in the Bakersfield metropolitan area. Over 150 oil field service companies are doing business in the Bakersfield metropolitan area. Portions of seven major oil fields are located within the City limits of the City of Bakersfield. Over 350 operating wells are located within the City limits of the City of Bakersfield. Approximately 55 percent of the assessed property value in the County of Kern is minerals. Over 16,600 jobs are in the oil-producing industry in Kern County. This does not include jobs related to oil and gas refinement, transportation, marketing and other oil-related industries.

It is the responsibility of the Planning Commission to review environmental impact reports for adequacy, including any mitigation measures that may be required to avoid adverse impact to the environment. It is also the responsibility of the Planning Commission to review proposed zoning ordinances. Hearings are held before the Planning Commission regarding such reports and ordinances. The Planning Commission then submits its recommendations to the City Council or to the Board of Zoning Adjustment, as required.

Mr. Stillman is an employee of Nahama Weagant, an oil development company grossing approximately \$1.6 million per year and offering its stock publicly. Mr. Stillman's official title is Manager of Land and Governmental Affairs. His responsibilities include some work with state and federal agencies, but none of his responsibilities require him to interact with the City of Bakersfield. Mr. Stillman does receive financial benefits other than salary from Nahama Weagant; however, as far as any operations within the area of Bakersfield are concerned, his compensation is straight salary. Mr. Stillman also owns approximately 1,000 shares of Nahama Weagant stock; however, these shares constitute only .05 percent of the 2 million shares of Nahama Weagant stock currently outstanding.

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Nahama Weagant owns 25 percent of two wells located within an area which was recently annexed by the City of Bakersfield. One well has been shut in since February 1986. The other well has been shut in since July 1, 1986. Nahama Weagant had been operating the wells at a substantial loss for some time prior to being shut in. The startup costs after a well has been shut in are substantial. By state law, a well must be abandoned within two years after it has been shut in. The chances that the two wells will ever be operated for commercial production of oil is virtually nil. The cost to abandon the wells would be twenty to thirty thousand dollars. The ordinance as presently being considered by staff would exclude wells currently in existence; however, if any ordinance as finally adopted imposed any significant requirements upon existing wells, Nahama Weagant would be compelled by economic necessity to abandon their wells sooner rather than later. Nahama Weagant would be able to utilize the twenty to thirty thousand dollars at an interest rate of approximately 20 percent; therefore, the total impact upon Nahama Weagant would be the usage of the money between the date the ordinance requires compliance and the date that Nahama Weagant would otherwise abandon the wells. It is estimated that the ordinance could not have any impact upon oil wells within the City of Bakersfield any earlier than January 1, 1987.

Attached are copies of articles which recently appeared in the Bakersfield Californian regarding the above matter.

If you have any questions, please contact me immediately.

Thank you for your time and consideration.

Very truly yours



C. T. Swallow
Deputy City Attorney

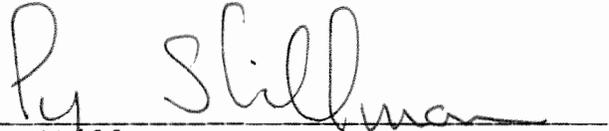
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I have reviewed and approved the foregoing facts and information. To the best of my knowledge and belief, they are true and accurate in every particular.

DATED: July 14, 1986



Ty Stillman
Planning Commissioner

CTS:kda

4 L-EIR1

Attachments

RESUME

KENNETH "TY" STILLMAN

EDUCATION

1979 Master of Arts: Biology	Humboldt State University; Arcata, CA
1975 Bachelor of Science: Biology	California Polytechnic State University, San Luis Obispo, CA
1973 Associate of Arts: General Studies	Sierra College; Rocklin, CA

PROFESSIONAL EXPERIENCE

Manager of Lands and Governmental Affairs Nahama & Weagant Energy Company; Bakersfield	1982-Present
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As Manager of Lands and Governmental Affairs, my duties include the planning and supervision of lease acquisition programs; administration of contracts and contract negotiations; coordination with various federal, state, and local regulatory agencies; and public representation of company positions and concerns at various state and local public hearings. Industry affiliations include positions as Director for the California Independent Producers Association and Area Director for the Independent Producers Association of America. The position requires skills in managing people, conducting meaningful negotiations, constructing various forms of contracts and agreements, and presenting company concerns in a public forum.

Environmental Analyst QUAD Consultants; Bakersfield	1980-1982
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As an Environmental Analyst I contributed to the research and preparation of a number of study documents for both public and private clients. These studies included economic development studies; regional transportation studies; environmental impact reports and various elements of city and county general plans.

PROFESSIONAL EXPERIENCE (CONT'D.)

Basic research and report writing skills were required as well as a sound working knowledge of state and local planning and environmental laws and regulations. During my employment with QUAD, I was project manager for the preparation of a number of environmental documents which required the management of document preparation, coordination with representatives of the various lead and responsible agencies, and coordination with other researchers and contributors.

Graduate Assistant/Researcher
Humboldt State University

1975-1979

During the completion of graduate studies at Humboldt State University, I held a number of positions as teaching assistant and research assistant. Duties ranged from preparation of lab classes and lab lectures to development of independent research projects. Skills required were a good understanding of subject matter, an ability to communicate with others, and the ability to define and complete original research projects.

HONORS AND AFFILIATIONS

- Graduated with Honors from California Polytechnic State University at San Luis Obispo
- Graduated with Honors from Humboldt State University
- Twice nominated for Virginia Romble Award to Outstanding Biology Graduate Student
- Member California Independent Producers Association Board of Directors
 - Member Natural Gas Committee
 - Member San Joaquin Valley Crude Oil Committee
- Member Independent Producers Association of America
- Area Director, Western Region

B2
B6

June 25, 1986

METRO

\$2 million claim
in loss of boy's

THE BAKERSFIELD CALIFORNIAN

Planner's vote spurs call for pr

By TOM MAURER
Californian staff writer

The city attorney's office will ask the state Fair Political Practices Commission to determine if Bakersfield Planning Commissioner Ty Stillman has a conflict of interest in voting on a controversial oil ordinance.

Acting on questions raised by *The Californian*, Deputy City Attorney Tom Swallow said Tuesday he will ask state officials if Stillman should refrain from voting because he is a high-ranking official of an oil company which owns two oil wells within the city.

But Stillman, manager of lands and governmental affairs for Nahama & Weagant Energy Co., said he will continue to vote until someone tells him to stop.

"In my mind, I do not believe that I have a conflict of interest and, if it is left to me, I will continue to participate (in votes and discussion) until it is shown to me that a clear and specific conflict exists," he said Tuesday.

Stillman first was accused of a conflict of interest June 5 by two southwest Bakersfield women, who said his pro-oil industry position biased his vote on an oil drilling environmental report and an upcoming oil drilling ordinance.

The city attorney's office determined at that time



"In my mind, I do not believe that I have a conflict of interest ..."

—Ty Stillman

However, a check by *The Californian* that Nahama & Weagant owns city limits, at the northwest corner of Coffee Road. That area v along with the Rancho Laborde weeks before Stillman's public s

The proposed citywide oil Stillman and other planning cor would affect all future oil drilling

They also are considering affecting oil drilling in south question city attorneys are g Stillman's decisions on the sou direct effect on the future Planning Department says the and that statistics from the sou to write the oil ordinance.

Assistant City Attorney A drilling ordinance might include wells, such as Nahama & We Fruitvale field. That would n might vote on an exclusion w company's oil wells.

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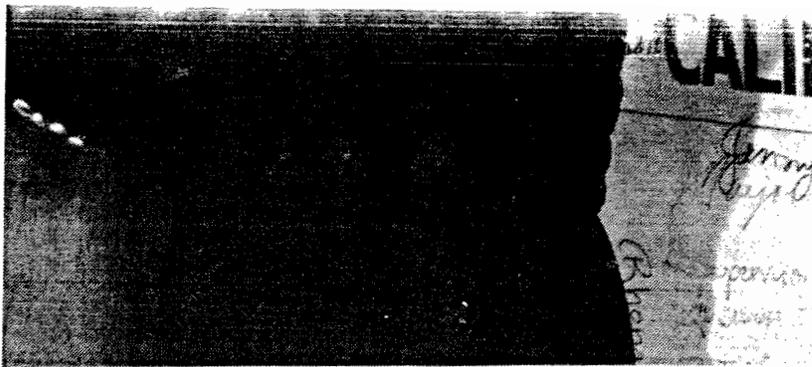
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JACK KNIGHT / Californian staff

Giant greetings: Supervisor Ben Austin signs a giant greeting card that will be sent to Filipino leaders as part of the Philippine Weekend celebration, July 26-27, in Delano. Kern County Supervisors honored weekend organizers Tuesday.

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STILLMAN: City legal official seeks state ethics investigation

Continued from B1

Nahama & Weagant also had a "farmout" contract in 1982 to drill a Tenneco Oil Co. well in Rosedale. Nahama & Weagant drilled the well in an area where Tenneco owned the mineral rights, then sold the oil and paid Tenneco a royalty.

Swallow said that does not constitute a conflict of interest because Nahama & Weagant paid Tenneco, rather than receiving money from Tenneco to drill the well. He said the law considers the source of income — even though Nahama & Weagant could not drill and sell the oil without a contract with Tenneco.

However, a Tenneco spokesman told the Planning Commission earlier this month that it owns "a vast majority of the mineral (rights) within the city limits." That raised a question about Nahama & Weagant's interest in drilling future wells within the city for Tenneco.

"You've raised some legitimate questions, and we have agreed to look at this issue again," Swallow said Tuesday. "This is a very complex issue and we're still trying to sort it out. It may be that there is no conflict, but we want to consult with the state and make sure of our position."

Stillman said he didn't feel that his position on the Planning Commission gave him any "unique advantage" over anyone else in the oil industry.

State law says a conflict of interest exists if someone receives a unique and unfair position compared with members of the general public, not another member of the same industry. A person also has a conflict if he receives a direct financial benefit from his decisions or discussions on a public body.

"I talked with Swallow about this a month ago," Stillman said. "I wrestled with my conscience about this. I could not see, from what he told me the law requires, that I had either a technical or moral conflict of interest."

He said Nahama & Weagant has no interest in drilling wells for Tenneco within the city, and is focusing its efforts on natural gas exploration in the Sacramento Valley.

"I knew that our two wells could be annexed into the city, but I didn't see any strong connection with my participation on this (environmental report involving southwest Bakersfield)," Stillman said. "I admit that these are valid questions and some of them I hadn't thought about. But I was focusing on strictly a financial conflict, and I couldn't see one. I still don't see one."

Lisa Smith, one of the two southwest residents who challenged Stillman's potential conflicts earlier this month, said she was glad the city attorney's office was reviewing Stillman's case.

"But I think the city attorney's office should have looked at this more thoroughly a long time ago," she said. "They should not make the public and *The Californian* do their job for them."

Swallow said the city attorney's office "is not the enforcement agency for conflict of interest laws. That responsibility lies with the state Fair Political Practices Commission and the district attorney's office. We are given the responsibility to act as legal adviser to the city and advise our clients in ways so they don't violate the conflict of interest laws."

California forecasts

SAN JOAQUIN VALLEY — Sunny today. Highs from the 90s to near 104. Northwest winds to 20 mph during the afternoon and light winds elsewhere. Fair to night and Thursday. Lows in the 50s through the 60s. Highs in the upper 80s through the 90s.

ANTELOPE VALLEY AND MOJAVE DESERT — Continued fair skies with sunny hot days and gusty afternoon west and southwest winds 15 to 30 mph through Thursday. Highs both days 95 to 105. Lows 62 to 69.

CENTRAL CALIFORNIA — Coastal fog and low clouds spreading into coastal valleys nights and mornings. Fair inland. Lows in the 50s with 60s and lower 70s inland. Highs in the 60s along the coast to near 103 inland

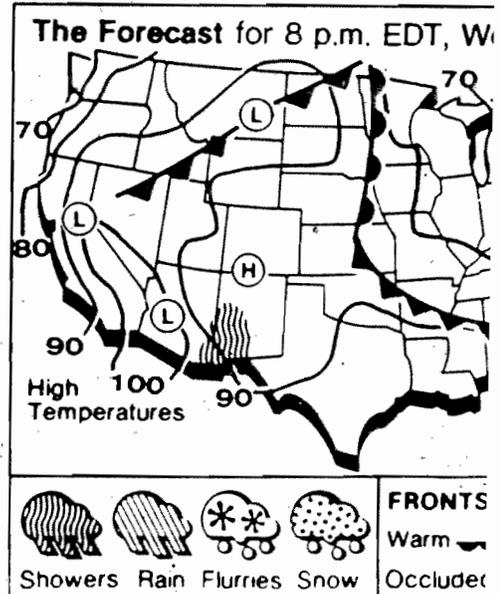
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California temper

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		Montebello	81 61
		Monterey	69 55
Apple Valley	103 62	Newport Beach	68 60
Barstow	108 73	Oakland	70 56
Beaumont	100 57	Ontario	89 60
Big Bear	84 44	Palm Springs	115 78
Bishop	98 51	Pasadena	83 58
Blythe	113 77	Paso Robles	93 54
Catalina	65 60	Riverside	92 58
Eureka	66 52	Red Bluff	101 71
Fresno	104 70	Redwood City	74 60
Lancaster	102 62		



National Weather Service NOAA

METRO

MONDAY, JULY 14, 1986

THE BAKERSFIELD CALIFORNIAN

Planning official's oil votes questioned

By TOM MAURER
Californian staff writer

Four southwest Bakersfield residents have asked the state Fair Political Practices Commission to determine whether Planning Commissioner Ty Stillman has a conflict of interest in voting on oil-related issues.

The letter — from Lisa Smith, Marion Bradshaw, M. Anna Hackney and B. Hall Hackney — was filed last week and has been assigned to an investigator, a spokesman for the state agency said.

Although contents of the letter are not revealed, Smith said it

includes information about an environmental report on oil-well drilling that may be approved by the Planning Commission next week.

Stillman, who was appointed to the commission in February, is the manager of lands and governmental affairs for Nahama & Weagant Energy Co. His company has two small-volume oil wells in northwest Bakersfield, but no interests in a 10-square-mile area in the southwest being studied for the effects of oil-well drilling.

The four residents live within the environmental study area and have had trouble with oil wells drilled

near their homes in past years. Although they say they support the oil industry, they want protection from wells drilled near homes.

Smith said the letter provides information about Nahama & Weagant's "working relationship with other (oil-drilling) operators who have interests in the study area."

"We're not questioning Mr. Stillman's integrity or reputation or anything like that," Smith said. "The question is: Does he have too many (oil-related) interests to make an impartial decision? But whatever the FPPC decides is where it will stop. We don't intend to take it any

further. We did this because we asked for a written opinion from the city attorney and didn't get one."

Deputy City Attorney Tom Swallow said he already has asked an attorney from the practices commission for advice and will send a written summary of Stillman's situation to the state next week. The state said the issue was too complicated to determine over the phone, so an "advice letter" will be sent to the city after the review is complete.

Stillman has said he doesn't believe he has a conflict of interest in voting on the environmental report,

which sets guidelines for residential areas. Although the report involves southwest Bakersfield, the Planning Department said that its results will help determine citywide oil-drilling or citywide ordinance within the city. The Fruitvale field where Weagant's wells are located

Stillman said the report and proposed ordinance will affect not only the oil industry but most of the development in Bakersfield. Therefore, he said, his company is not in a unique position to benefit from his voting on the decisions on oil drilling

METRO DIGEST

Group reunites for picnic

About 75 persons who helped establish the Kern Child Abuse Prevention Council reunited in Dale Park Sunday to feast on hamburgers and





Nahama & Weagant Energy Company

602 H STREET
BAKERSFIELD, CA 93304
(805) 323-9075

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June 5, 1986

Mr. David Millazo
Chairman Bakersfield City Planning Commission
Bakersfield Planning Department
1501 Truxtun Ave.
Bakersfield, CA 93301

Re: DEIR Oil Exploration &
Production in Southwest
Bakersfield,

Dear Mr. Chairman:

On behalf of Nahama & Weagant Energy Company I would like to submit the following comments on the above captioned Draft Environmental Impact Report.

1. 1.0, page 1: The DEIR does not adequately describe the importance of oil and gas production to the general community and its economy. A map or figure illustrating the locations of producing wells in the metropolitan Bakersfield area and the outlines of existing or abandoned oil and gas fields in the same area would be helpful in this regard.
2. 1.0, page 1: The purpose of the DEIR should be to assess impacts and identify potential mitigation measures. It should be noted that conditions of approval for specific projects provide actual mitigation and that an EIR is advisory only in the recommendation of mitigation measures.
3. 1.0, page 1: The project as described in the Introduction is the full development of the Stockdale Field. This should be more clearly stated and more time and effort should be put into a clearer description of the Stockdale Field (total anticipated reserves).
4. 2.0, page 3: The statement of "Project Objectives" needs to be carefully reviewed in that many of the mitigation measures recommended by the DEIR will not lead to the "successful" recovery of "commercial" quantities of oil and gas. Recovery of the hydrocarbon reserves will benefit the public's health, safety and welfare in many ways. However, the test of "commercial" quantities will be subject to the costs and expenses of the various

mitigation measures actually employed, plus a reasonable return on investment. Therefore without an analysis of the incremental costs associated with each mitigation measure it is impossible to verify that they meet the stated project objectives.

5. 2.2.2, page 6: The DEIR makes certain assumptions concerning "preferred drillsites" in the study area. This results in the absence of a base line analysis of an unmitigated drillsite for comparison sake. As the DEIR notes, without this base case analysis by which to evaluate future proposals not consistent with the assumptions arbitrarily made by the consultant, other future projects in the study area may be subject to separate and independent project environmental review. This is not an acceptable limitation of the DEIR and it should be expanded to include an unmitigated analysis.
6. 2.2.2, page 8: How can a decision be made as to "preferred drillsites" without a clear delineation of the extent of the hydrocarbon accumulation? If the purpose of this document is an environmental analysis of potential drillsites which will allow "successful" "commercial" recovery of oil and gas what value is there to identifying preferred drillsites based solely on an evaluation of surface land use compatibility issues?
7. 2.3.1, page 12: An oil and gas mineral ownership and mineral lease map should be included in the DEIR to better describe the project site characteristics. Both the ownership and lease information are of record and readily obtainable.
8. 2.3.1, page 12: The DEIR notes that typical oil fields in the Bakersfield area average one well per each 50 acres, yet several examples of major fields come to mind where the development densities are much greater, (i.e. Kern River Field, Fruitvale Field, Rosedale Ranch and Bellevue). It would be more appropriate to expand the discussion by giving ranges of development densities based on depth of production, recovery techniques employed and lease requirements.
9. 2.3.3, page 13: DEIR apparently is mandating a 90 day continuous drilling obligation to be a condition of project approval without evaluating the economic

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consequences of such a constrained development program. This program should be reviewed.

10. 2.3.3, page 14: Please provide a site preparation schedule to support the 18 week estimate contained in the DEIR.
11. 2.3.3, page 15: To the best of my knowledge "cuttings" are not removed by vacuum trucks, please clarify.
12. 4.1.1, page 27: DEIR fails to discuss the White Wolf Fault which was the source of the 1952 Bakersfield earthquake.
13. 4.2.3, page 46: DEIR suggests hydroseeding for erosion control on berms. First this seems to be a moot problem in an area with less than 6 inches of cumulative annual rainfall. Second, unless fully maintained, dry vegetation may present a fire hazard. DEIR should explore other methods of erosion control or reevaluate the need given the low annual rainfall amounts in the project site area.
14. 4.2.3, page 47: DEIR assumes that all produced formation water will be trucked off site. DEIR fails to evaluate the potential of on site reinjection of produced brine. This alternative may significantly reduce truck traffic impacts.
15. 4.3.1.1, page 50: DEIR has developed base line data for ambient noise levels in the project area by locating sample sites at "representative" locations. However, by correlating the sample sites with existing land use developments, the sample sites appear in residential developments away from existing industrial development. Data should include noise samples at the interface areas of existing residential and existing industrial areas to better establish the possible range of ambient noise levels.
16. 4.3.1.3, page 55: DEIR states that mobile noise impacts will be "negligible" on lands adjacent to heavily traveled streets and below what is considered "perceptible" on all streets evaluated. If this is true the mitigation measures for mobil noise sources on page

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56 are not required since mitigation is only necessary when potential impacts are considered significant.

17. 4.3.1.3, page 54: Table 2 estimates increased noise from project related traffic. The DEIR does so by adding to existing traffic levels the incremental contribution of all traffic associated with 4 projects. This is not a legitimate evaluation since the overall area is being developed for new residential, commercial and industrial uses. DEIR should examine normal traffic increase over the time necessary to implement 4 new projects and add project related impacts to future anticipated traffic. To do otherwise artificially skews the incremental impact of project related traffic noise.
18. 4.3.2.2, page 59-65: The DEIR concludes that given the acoustical mitigation incorporated in the project analysis assumptions, a well located with 250 feet of a residence will average 50 DBA which is within the proposed City exterior noise standards of 55 DBA (7:00 a.m. to 10:00 p.m.). However, the DEIR fails to adequately evaluate an unmitigated drilling operation so that the degree of attenuation can be analyzed. Further the DEIR makes all noise measurements assuming the closest possible receptor point. What amount of attenuation is possible with additional set back distances?
19. 4.3.2.3, page 65: DEIR suggests that enforcement of certain General Plan Noise Element Standards will mitigate nuisance noise impacts associated with the proposed project. Yet the DEIR fails to recognize that said policies are unenforceable without an implementing ordinance. Perhaps an effective ordinance with enforceable standards is adequate mitigation in and of itself. This alternate mitigation warrants further evaluation.
20. 4.3.2.3, page 66: All of the DEIR recommended mitigation measures listed on page 66 are unnecessary if enforceable standards are in place (see comment #19). Further, without an unmitigated base line analysis of noise generated and an evaluation of attenuation by distance most of the recommended mitigation are unsupported and may be unnecessary. What is the justification for limiting truck deliveries to the hours recommended when mobile source noise increases are unpreceptible? What is

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the justification for a 50 DBA noise level limitation when ambient levels at some locations are higher? What is the justification for 50 DBA limits when recommended city standards call for 55 DBA during the hours of 7:00 a.m. to 10:00 p.m.?

21. 4.4, pages 68-83: DEIR summarizes project related air pollution impacts by various phases and sources which are associated with the project. However, DEIR fails to relate the numbers represented back to existing ambient conditions. In addition, a dispersion model should be developed to show how impacts are localized or dispersed. These two inadequacies should be addressed in the DEIR.
22. 4.6.3, page 89-90: What is the source or justification for establishing a 16 foot height limitation.
23. 4.7.3, page 96: DEIR suggests that derricks (rigs) be dismantled if the rig is to remain idle for thirty days or longer. Given the time and cost of erecting the acoustical screening materials recommended by the DEIR this may be unreasonable. Further, CEQA requires mitigation only in instances where potential effects are considered significant. Since the DEIR characterizes shade/shadow impacts as minimal, no mitigation should be recommended or is required.
24. 4.8.2, page 103: DEIR's recommendation for 13.3 acre drillsites in residential areas is unreasonable unless such an area can serve a dual purpose such as providing park, recreation or open space. This dual purpose deserves much further analysis as the land values in this area are substantial and no one benefits from unusable buffer areas.
- 25 4.12.2, pages 128-132: DEIR recommends limiting truck traffic to designated routes as mitigation for project related impacts. However, all of the roadways which are identified as unacceptable for project related traffic presently support average daily truck trips of 133 to 487 (Table 2, page 54). Assuming that all truck vehicle trips associated with a well were concentrated on the least used roadway, the incremental difference is an eleven point two percent (11.2%) increase. Is this significant? Further is the DEIR suggesting a new city policy to limit truck traffic to just designated routes?

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26. General: The DEIR fails to recognize the legal ramifications of separate surface and mineral estates. Since California Law does not have statutory unitization or pooling provisions, a possible net effect of the mitigation measures recommended in this document may be the defacto elimination of the mineral estates right to a reasonable use of the surface for the enjoyment of said estate. This is a critical issue that demands much more investigation and consideration. It is entirely possible that the City may face future litigate over a "taking" without just compensation if mineral estate owners are unreasonably prohibited. In addition many surface developments may be hindered or limited by a mineral owner's decision to stall surface development until the value of his mineral estate is evaluated or substantially recovered. This would result in a situation that is a disbenefit to the surface owner and the City. The goal of this document is to evaluate the methods of accommodating all reasonable uses and to successfully encourage the growth and development of the area. There appears to be substantial road blocks suggested in this document which will make attainment of this goal difficult at best.

Respectfully,



Rocky Rasley
Vice President & General Manager