

# ROW SAN DIEGO



**Chapter 11: May - June 2019**

## 65<sup>th</sup> ANNUAL INTERNATIONAL EDUCATION CONFERENCE

**\*\* SEE PAGE 16 FOR DETAILS \*\***



HILTON PORTLAND DOWNTOWN 921 SW 6TH AVENUE PORTLAND, OR 97204, USA



### Upcoming Events:

- Executive Board Meetings:**
- August 14, 2019—12:00 p.m. to 1:00 p.m. at the SD County Water Authority, 4677 Overland Drive, San Diego
  - September 24, 2019—12:00 p.m. to 1:00 p.m. at the SD County Water Authority, 4677 Overland Drive, San Diego

## ENJOY THE SUMMER!



### SEE YOU AT THE NEXT LUNCHEON!

**Where? Handlery Hotel**  
950 Hotel Cir N, San Diego CA 92108

**When? August 21, 2019**

**Luncheon: 11:30 a.m. - 1:30 p.m.**

**COST:**

\$25/pp Reservation Required - Walk-ins \$30/pp

RSVP MUST BE RECEIVED by:

4:00 p.m. on Thursday, August 15, 2019

RSVP To Lida Jimenez: [ljimenez@semprautilities.com](mailto:ljimenez@semprautilities.com)

Or online at <http://www.irwa11.org/events/>

**NO-SHOWS:** IRWA is billed for meals based upon your reservation whether you attend or not. If you make a reservation and do not attend, you will be invoiced \$30 for the meal to recover costs. Thank you for your consideration.

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## Nick, von Gymnich SR/WA

May - June 2019



I don't like long good-byes so I'm going to keep this message short and sweet! My time as chapter President is quickly coming to an end. I've already presided over my last board meeting and luncheon and will be attending my last education conference as a chapter leader this June in Portland. (June 9-12)

I had three main goals for this year:

1. To ensure that Chapter 11 continued to grow
2. To educate our next generation of chapter leaders through expanded education offerings
3. And, finally to work on updating the chapter website/technology.

I believe we accomplished these goals – I say “we” because the Chapter has a great group of volunteers that continue to step up and ensure we continue to thrive. Great work!

Going forward I expect to see members of Chapter 11 involved in the projects making news around the County of San Diego - the proposal by SANDAG for high speed commuter trains and a grand central terminal, MTS proposing an expanded bus system, a transit connection to the airport as well as a new terminal 1, completion of the Mid Coast Trolley and expansion of the 5 freeway. I'm sure there are many other smaller projects that we will be a part of.

The chapter is only as strong as our volunteers. Thank you for an incredible year!



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# San Diego Education Opportunities: 2019

**Course 421: The Valuation of Partial Acquisitions**  
**September 3-6, 2019**  
**San Diego, CA**



## Course 421: The Valuation of Partial Acquisitions

### Course Description:

Participants will learn how to determine and appraise the larger parcel, techniques for appraising the part acquired, identifying and measuring various types of damages and how to value the remainder after acquisitions. The course introduces ways to handle special benefits and explores the before and after approach (how, why and when), and includes numerous exercises and case studies to aid in understanding.

**Course Level:**  
 Advanced

### Topics:

- Review of the basic principles and the valuation process
- Utilization of both Federal ("Before and After") Rule and the State (Summation) Method in the valuation of partial acquisitions
- Allocation of the partial acquisition compensation among its components (i.e., value of the part taken, damages to the remainder, benefits to the remainder, cost to cure)
- Application of various methods to analyze and quantify the impacts of partial acquisitions on remainder properties
- Analysis of both temporary and permanent easements and valuation techniques
- How to become a better expert witness

### Course Tuition Includes:

- Participant Manual
- USPAP Text

### Required Materials:

Financial Calculator

### Who Should Take This Course:

This course is geared toward experienced appraisers who are in the process of conducting partial acquisitions and deals with the special problems of the valuation of partial acquisition, both fee/easement.



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[www.thedoregroup.com](http://www.thedoregroup.com)

INTERNATIONAL REAL ESTATE CONSULTATION AND FORENSIC VALUATION

# Utilities Have the Right to Remove Trees Within an Easement

Brad B. Kuhn, Esq., Partner  
Law Firm of Nossaman LLP

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Many public agencies and utilities have easements for water or gas pipelines or electric transmission lines. Those easements typically contain express rights to construct, operate, and maintain the facilities, including rights of access; but oftentimes the easements are silent on what rights are reserved to the private property owner, including whether the owner can place trees or other improvements within the easement area. As utilities and public agencies are undertaking more thorough efforts to protect and maintain their rights-of-way, they are commonly seeking to remove such trees and improvements. Absent express language in the easement, are such trees or improvements permitted, or can the agency/utility remove them? A recent Court of Appeal decision, [Inzana v. Turlock Irrigation District](#), provides guidance and indicates the easement holder has the right to remove such trees or improvements upon a showing of reasonable interference.



## Background

In *Inzana*, the Turlock Irrigation District acquired an irrigation easement which granted “a right to construct, maintain, operate, and replace a pipeline and related structures,” including “the right to ingress and egress . . . for the purpose of operation, maintaining, repairing, and keeping the pipeline and related structures in operating condition.” The property owner subsequently planted pistachio trees within the easement area.



Years later, relying on its own newly enacted internal rules prohibiting the placement of trees or other improvements within its easements, the District demanded that the property owner remove the pistachio trees, as growing tree roots could eventually impact the pipeline’s integrity, causing it to crack and leading to flooding. The District stated that if the owner refused to comply, the District would remove the trees, and the District also threatened to terminate water delivery to the owner’s property. The owner filed a lawsuit challenging the District’s removal demand, claiming (i) the easement does not give the District the right to remove the trees, (ii) the District’s internal rules were not part of the easement and therefore could not be relied upon, and (iii) if the District removed the trees it would be liable for inverse condemnation for

taking private property without paying just compensation. The owner also sought to prevent the District from terminating water service to the property.

## Trial Court Decision

The trial court held that the planting of trees denied the District the right of ingress and egress, and therefore interfered with the District’s easement. The court further held that the District had the right to restrict water delivery to the property.

## The Appeal

The Court of Appeal agreed. The Court provided a general background on easement rights, explaining:

**“The rights and duties between the owner of an easement and the owner of the servient tenement . . . are correlative. Each is required to respect the rights of the other. Neither party can conduct activities or place obstructions on the property that unreasonably interfere with the other party’s use of the property. In this respect, there are no absolute rules of conduct. The responsibility of each party to the other and the “reasonableness” of use of the property depends on the nature of the easement, its method of creation, and the facts and circumstances surrounding the transaction.”**

## Utilities Have the Right to Remove Trees Within an Easement (continued)

The Court further explained:

**“[a property owner is] entitled to make all uses of the land that are not prohibited by the servitude and that do not interfere unreasonably with the uses authorized by the easement. . . . Actions that make it more difficult to use an easement, that interfere with the ability to maintain and repair improvements built for its enjoyment, or that increase the risks attendant on exercise of rights created by the easement are prohibited . . . . In determining whether the holder of the servient estate has unreasonably interfered with exercise of an easement, the interests of the parties must be balanced to strike a *reasonable accommodation* that maximizes overall utility to the extent consistent with effectuating the purpose of the easement . . . .”**

Applied to this situation, the Court explained that the evidence showed that the trees interfered with the District’s ability to maintain and repair the pipeline; and could eventually cause a maintenance issue or damage the pipeline. As a result, the District could require the removal of the trees pursuant to its easement rights, and it would not be liable for a taking.

With respect to the District’s termination of water delivery to the property, the Court explained that irrigation districts are statutorily granted the power to create equitable rules for the distribution and use of water, and a district’s ability to enforce rules by terminating water delivery is a tool in providing for the orderly distribution of irrigation water. The court therefore held that there is nothing inequitable in refusing to deliver water to landowners who refuse to comply with the district’s rules.

### Conclusion

The *Inzana* decision is an important reminder for public agencies and utilities that their typical pipeline or transmission line easements include the right to prevent the placement of trees (or other improvements) within their easements to the extent such improvements interfere with the ability to access, maintain, operate, or repair the facilities; express easement language on this topic is not necessarily required. The decision is also important for property owners, as they need to understand that in granting easement rights on their property, there is a likelihood that their remaining use of the easement area can be significantly limited, even if not expressly called out in the easement document.

Mr. Kuhn can be reached at [bkuhn@nossaman.com](mailto:bkuhn@nossaman.com).



**JAMES (BUZZ) NAUGHTON, JR., MAI**

◆Certified General Appraiser – Real Estate Appraisal/Consultation◆

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# PLEASE MAKE THESE CORRECTIONS/ADDITIONS TO YOUR 2018-2019 ROSTER:

**Please note the following new members in your roster:**

**Mr. Sean Donahoe**

Clark Land Resources, Inc.  
9150 Chesapeake Drive, Suite 190  
San Diego, CA 92123  
UNITED STATES  
Phone: (858)205-5620  
Fax: (760)560-1662  
E-mail: sean.donahoe@clarklandresources.com  
Chapter: Chapter 011-San Diego, CA  
Member Type: Active Regular Member

**Mr. Michael Hank**

California Department of Transportation  
4368 Rueda Drive  
San Diego, CA 92124  
UNITED STATES  
Phone: (619)920-0484  
E-mail: m23hank@gmail.com

**Ms. Anne Smiddy**

Meyers Nave Riback Silver & Wilson  
101 W. Broadway, Ste. 1105  
San Diego, CA 92101  
UNITED STATES  
Phone: (619)569-2094  
E-mail: asmiddy@meyersnave.com

WELCOME!

## 2019 SCHEDULE

**LUNCHEONS** - HANDLERY HOTEL  
950 HOTEL CIR N,  
SAN DIEGO CA 92108

Wednesday, August 21, 2019  
Wednesday, October 16, 2019  
Wednesday, December 11, 2019

**BOARD MEETINGS** - SD County Water Authority,  
4677 Overland Drive, San Diego

Wednesday, August 14, 2019  
Wednesday, September 25, 2019  
Wednesday, October 23, 2019

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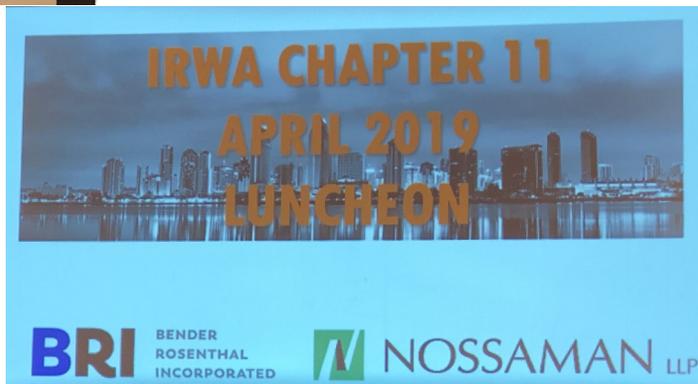
462 STEVENS AVENUE, SUITE 201  
SOLANA BEACH, CA 92075-2099

# May Luncheon

MANAGING PUBLICLY OWNED PROPERTY: BEST PRACTICES FOR LEASES, LICENSES, AND ENCROACHMENTS

Presented By:  
**Chip Willett**, Southern CA Regional Manager  
Bender Rosenthal Inc.

**Brad Kuhn**, Partner  
Nossaman LLP



**ENCROACHMENTS – REMOVAL PROCESS**

- Self-Help
  - Allowed (*Berkeley v. Gordon* [1968] 264 Cal. App. 2d 461.)
  - Risks (ownership dispute – inverse claim, disposal?)
- Court action
  - Ejectment / trespass / nuisance / quiet title / injunctive relief (*County of Marin v. Roberts* [1970] 4 Cal. App. 3d 480.)
  - Damages (cost of removal, diminution in value or rental value)



**Voting!**



**New Members**

# IRWA Chapter 11 Members' Birthdays



## May, 2019

William Anderson  
 Vladimir Balotsky, SR/WA  
 John Berggren  
 Gerry C. Canfield, SR/WA  
 Sandra Durbin, SR/WA  
 Colleen E. Fino, SR/WA  
 Pete Golding  
 Debra S. Lundy, SR/WA,  
 R/W-NAC  
 Vince McCaw, SR/WA, R/W-RAC  
 Alex K. Mockus  
 Patrick Nash, SR/WA, R/W-AMC  
 Scott Noya  
 Hugh W. Rowles, RWA  
 Jennifer L. Smith, SR/WA  
 Kristen Steinke-Combe  
 Nicolaus Von Gymnich, SR/WA



## June, 2019

Dennis Alviso  
 Bruce Beach  
 Rob Caringella  
 Halbert C. Casey  
 Walt E. Evans, III, SR/WA,  
 R/W-RAC, R/W-NAC  
 Sean P. Quinn  
 Bill Rose  
 Patrick J. Ryan  
 Diane Schooler  
 James Shepard  
 Lidia Sosinsky  
 Zachary B. Svelling

***Sorry if we missed your birthday, - it's because we don't have that information in our records. Please send your information to [irwach.11newsletter@gmail.com](mailto:irwach.11newsletter@gmail.com) if you would like to be included.***



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# **Meet Your Colleague**

This month we hear from member **Donna Fritts, Sr. Right of Way Agent** at Clark Land Resources. Donna has worked at her current position for 4 years and in the Right of Way Industry for 22 years. Here, in her own words, is a personal sketch of our colleague, **Donna**:



## ***What are your current job responsibilities?***

My job currently varies within our company. From being an advisor to filling in on various activities needed. Currently assisting in multiple tasks on the SDGE FIRM project.

## ***What has been your favorite project you have been involved with?***

I worked on a CO2 line in Louisiana a few years ago. A project that allowed me to meet some very interesting people and learn of the different cultures that exist throughout this country.

## ***What path did you take to arrive in the ROW industry?***

It's definitely not something I pursued out of school. I was managing a major retail store when I was approached by an individual from a utility company. He ended up being my mentor and have never looked back at any other career path.

## ***What hobbies or activities do you enjoy outside of work?***

enjoy family time. I have a 4 year old grandson that keeps life very interesting and fun. Bar B Ques. Hanging out at the beach. Enjoying the great outdoors. I collect comic books and coins. I enjoy going to football, baseball and soccer events.

## ***What is your ideal vacation destination?***

Anywhere that gets my mind free of work. I enjoy tropical locations. Someday I hope to do a cruise. I like the warm areas.

## ***If you could try another job for a day what would it be?***

If you could try another job for a day what would it be? I would like to just for one day be a waitress. It may sound a bit lame but I have not had the opportunity to do this but it would be interesting.

## ***Whom do you admire and why?***

Rosa Parks. The lady was a genuine person. She stood by her beliefs, what was right and was not backing down. Strong in her life as a human being but also as a mother and a figure in this country that will go down in history forever.

## ***Tell us about an experience you consider part of your 15 minutes of fame.***

Hmmm fame isn't me. I never looked at fame as a part of my life.

## ***Is there a ROW/public improvement project you would like to see developed in the region?***

Roads need improvement in San Diego County. Potholes all across this County has created havoc on vehicles and can be quite expensive for folks who do not have the funds to fix their autos.

## ***Is there any one question in particular that you would like to ask your ROW colleagues?***

Yes there is... Why and what do you enjoy the most about your experiences in the ROW industry?

## ***Do you have any advice to newly hired ROW professionals?***

Well one can always give advice so mine would be to be honest, have integrity in all you do in personal and business. Take every moment you can to learn the ins and outs of your job/career. Find a mentor they can be the best asset you will ever have. Last but not least, enjoy your job.

# INTERNATIONAL NEWS

International Executive Committee (IEC) elections are coming up soon at the 65<sup>th</sup> Annual Education Conference in Portland during the Board of Directors (BOD) meeting on Wednesday, June 12<sup>th</sup>. Our current President is Jeffrey L. Jones, SR/WA, R/W-NAC, R/W-RAC, R/W-URAC and the incoming President (President-Elect) is Aimie L. Mims, SR/WA, R/W-AMC, R/W-NAC.

*Current nomination received for IEC positions are as follows:*

**President-Elect**

Sharon N. Slauenwhite, SR/WA

**Treasurer**

James A. Olschewski, SR/WA, R/W-RAC

**Vice President**

Ana B. Rausch, SR/WA, R/W-RAC  
Jake Farrell, SR/WA

**Secretary**

Brett Farner, SR/WA  
Judy Jones, SR/WA

Additional nominations may be made from the floor during the BOD meeting in Portland. Please reach out to your Region's International Nominations and Elections Committee (INEC) representative with any questions about this process. Your Region 1 INEC Representative is, Alesia Strauch, SR/WA, R/W-RAC. She can be reached by phone at (925) 691-8500 or via email to [astrauch@arws.com](mailto:astrauch@arws.com).



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# Chapter Bulletin Board

SHARE YOUR NEWS WITH US!!

## Please note the following new certifications:

Sara Rafou, RWA-GN  
Lucille Galvin, SR/WA recertification  
Michael Harris – RW/ NAC recertification  
Thurman Hodges, SR/WA recertification  
Bernard Johnson – RW/ AMC recertification  
Debra Lundy, SR/WA-NAC, recertification  
John Kross, SR/WA recertification  
Colleen Fino, SR/WA recertification  
Peter McMorris, SR/WA-NAC, recertification

*Do you have time to volunteer and want to become more involved with IRWA? Chapter 11 has vacancies and could use you! Please contact any board member for more information!*

## Ch. 11 New Slate of Officers 2019-2020

### PRESIDENT AND INTERNATIONAL DIRECTOR

Eric Schneider, MAI, ASA, Jones, Roach & Caringella

### VICE-PRESIDENT AND INTERNATIONAL DIRECTOR

Cody Ragsdale, Clark Land Resources

### TREASURER

Lauren Kodama-Roenicke, Rincon Consultants, Inc.

### SECRETARY

Lauren Fritts, Clark Land Resources



Find us on  
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Search: "San Diego Chapter 11 of the International Right of Way Association" or click [here](#)

### It's YOUR newsletter ... Be a part of it!

If you want to contribute an article you've written, have photos (especially the San Diego skyline!), want to suggest a possible topic or project to be covered, have event or general announcements, job postings, regional or international updates, or are available to be interviewed for our "Meet Your Colleague" feature, please email newsletter editor Sarah Bottom at: [irwach.11newsletter@gmail.com](mailto:irwach.11newsletter@gmail.com).

# Chapter Bulletin Board



**New Opportunity!** This year we are offering a sponsorship for our Luncheons. There are four of these available and the cost is only \$250.00 each.

This gives you:

- A one-time ½-page ad in our Newsletter (a \$70.00 value), Signage at the luncheon and a 5-minute opportunity to address the audience regarding the service you provide.

If you have any questions or comments on any of the advertising opportunities, please feel free to contact me at 619-261-5143 or by email [dennis.alviso@ctt.com](mailto:dennis.alviso@ctt.com). Thank you for your continued support of our Chapter!



## JOB OPPORTUNITIES

Associate Manager, Right of Way, Condemnations, and Real Estate Realty Income Corporation, Encinitas, CA CLOSING 4/30/19. Click [HERE](#) to apply

Senior Land Surveyor, City of San Diego, San Diego, CA . Click [HERE](#) to apply

Land Surveying Associate, City of San Diego, San Diego, CA . Click [HERE](#) to apply

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# INTERNATIONAL NEWS



JUNE 9-12, 2019

## 65<sup>TH</sup> ANNUAL INTERNATIONAL EDUCATION CONFERENCE



HILTON PORTLAND DOWNTOWN 921 SW 6TH AVENUE PORTLAND, OR 97204, USA

### Conference Location:

Hilton Portland Downtown  
921 SW 6th Ave  
Portland, OR 97204, USA

### Conference Dates:

Sunday, June 9 - Wednesday, June 12, 2019

#### Registration Rates (all Rates are listed in US \$)

	By February 22	Feb 23 - April 12	After April 12
Member - Full Registration	\$ 575	\$ 675	\$ 750
Non-Member - Full Registration	\$ 675	\$ 775	\$ 850
Young Professional (ages 35 and under)	\$ 480	\$ 540	\$ 600
Companion	\$ 300	\$ 300	\$ 350
Daily Registration (per day)	\$ 225	\$ 250	\$ 275

FOR MORE INFORMATION VISITS ONLINE INFORMATION [HERE](#).

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## 2018 – 2019 Chapter 11 Executive Board, Committees and Communities of Practice (CoP)

### OFFICERS:

President:	Nick von Gymnich, SR/WA	<a href="mailto:nvongymnich@sdcwva.org">nvongymnich@sdcwva.org</a>
Vice President:	Eric Schneider, MAI, SRA	<a href="mailto:eric@jrcvaluation.com">eric@jrcvaluation.com</a>
Treasurer:	Cody Ragsdale	<a href="mailto:cody.ragsdale@clarklandresources.com">cody.ragsdale@clarklandresources.com</a>
Secretary:	Julie Marshall	<a href="mailto:jmarshall@rinconconsultants.com">jmarshall@rinconconsultants.com</a>

### EXECUTIVE BOARD MEMBER:

Past President:	Fred Clark, SR/WA	<a href="mailto:FredW.Clark.Sr@clarklandresources.com">FredW.Clark.Sr@clarklandresources.com</a>
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### STANDING COMMITTEES:

Nominations and Elections:	Carol Brooks, SR/WA	<a href="mailto:cbrooks@cornerstonemanagementskills.com">cbrooks@cornerstonemanagementskills.com</a>
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(Committee Members : Lucy Galvin, SR/WA, Carole Herrin, SR/WA, Bill Mac Farlane, SR/WA, Vince McCaw, SR/WA)

Professional Development:	Kathleen Hider, SR/WA	<a href="mailto:kathleen.hider@sdcounty.ca.gov">kathleen.hider@sdcounty.ca.gov</a>
---------------------------	-----------------------	--

(Committee Members: Vince McCaw, SR/WA and Nick von Gymnich, SR/WA)

Education:	Bethanee Lussier, SR/WA	<a href="mailto:bethanee.lussier@clarklandresources.com">bethanee.lussier@clarklandresources.com</a>
Membership Co-Chairs:	Lisa Murphy, SR/WA	<a href="mailto:LMurphy2@semprautilities.com">LMurphy2@semprautilities.com</a>
	Lauren Fritts	<a href="mailto:lauren.fritts@clarklandresources.com">lauren.fritts@clarklandresources.com</a>

### INDUSTRY COMMITTEE CHAIRS:

Electric & Utilities:	William "Bill" Yee, SR/WA	<a href="mailto:wye@semprautilities.com">wye@semprautilities.com</a>
Public Agencies:	Carolyn Lee, SR/WA	<a href="mailto:carolynlee@san.rr.com">carolynlee@san.rr.com</a>
Oil & Gas Pipeline:	Sue Cope, SR/WA	<a href="mailto:sue.cope@clarklandresources.com">sue.cope@clarklandresources.com</a>
Transportation:	Daniel Furr	<a href="mailto:Dfurr@opcservices.com">Dfurr@opcservices.com</a>

### COMMUNITY OF PRACTICE (CoP) REPRESENTATIVES:

Asset Management:	vacant	
Environment:	Julie Marshall	<a href="mailto:jmarshall@rinconconsultants.com">jmarshall@rinconconsultants.com</a>
Relocation:	vacan	
Surveying & Engineering	Julie Blackman	<a href="mailto:julie.blackman@clarklandresources.com">julie.blackman@clarklandresources.com</a>
Valuation:	Mark Hendrickson, MAI	<a href="mailto:mark@hendricksonapprail.com">mark@hendricksonapprail.com</a>

### CHAPTER COMMITTEE CHAIRS & PARLIAMENTARIAN:

Advertising:	Dennis Alviso	<a href="mailto:dennis.alviso@ctt.com">dennis.alviso@ctt.com</a>
Luncheon:	Lida Jimenez, SR/WA	<a href="mailto:ljimenez@semprautilities.com">ljimenez@semprautilities.com</a>
Newsletter:	Sarah Bottom, RWP	<a href="mailto:irwaCh.11newsletter@gmail.com">irwaCh.11newsletter@gmail.com</a>
Parliamentarian:	Cynthia Colburn, SR/WA	<a href="mailto:cyncolburn@gmail.com">cyncolburn@gmail.com</a>
Roster:	Carole Herrin, SR/WA	<a href="mailto:c-pherrin@msn.com">c-pherrin@msn.com</a>
Website:	Lauren Fritts	<a href="mailto:lauren.fritts@clarklandresources.com">lauren.fritts@clarklandresources.com</a>
Young Professionals:	David Hall	<a href="mailto:david.hall@clarklandresources.com">david.hall@clarklandresources.com</a>