



PLANO

Professional Landmen's Association of New Orleans

OCTOBER, 2006

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PLANO BULLETIN #041



MESSAGE FROM THE PLANO PRESIDENT 2006-2007



I have done a great deal of reflection over the past year. Anxious times and advancing age being the most likely causes of this, I think. One of the positive outcomes of that retrospection is the reinforcement of my opinion of the quality of the people in our profession. The level of cooperation and consideration demonstrated during the tumultuous weeks following the storm by member landmen, our sponsoring companies and our colleagues in Houston, Lafayette and other cities was truly remarkable. For these reasons, I am especially proud and honored to serve as President of PLANO for the 2006-07 term.

As we find ourselves rebuilding our city and yearning for the familiar, the PLANO Board is striving to restore a full slate of events for this year. That means excellent educational opportunities, social events that enable our members to get to know each other better, and civic activities that assist in the recovery efforts.

We are planning to put a special emphasis on our luncheon speakers this year, emphasizing not only topical industry issues but also the recovery. We were very pleased to have Secretary Scott Angelle of the Louisiana Department of Natural Resources as our first speaker, and look forward to having David Meeks, City Editor of The Time-Picayune as our speaker in November. Mr. Meeks will talk about the status of New Orleans one year after Katrina. After meeting at Galatoire's in December, we will continue with additional dynamic speakers in 2007.

In November, we will hold a Half-Day Seminar with CLE and CPL credit available. A wine tasting featuring fine wines appropriate for the holidays will follow the seminar. A flyer containing details will be issued soon. We will return to the Napoleon House to celebrate the conviviality and good cheer of the season at our Christmas Social in December.

Executive Night and the Sponsor Party are scheduled for February 15, the Spring Golf Tournament in May, as well as other social and civic events. The year will conclude with AAPL holding its Annual Meeting in New Orleans in June.

In closing, I must again thank David Dufour and last term's Board for their dedication and leadership. I know no other President has ever served under circumstances as adverse as those he endured. His leadership kept our organization together and it has passed to this Board in fine shape.

John T. Dale, Jr., PLANO President

Front Cover - A corner in PLANO's Demonstration Garden, New Orleans Botanical Garden. The Demonstration Garden was a gift from PLANO to the New Orleans Botanical Garden in the Spring of 2003.

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Tennis



Front row, l. to r.: Jo Ann P. Anderson, PLANO Auxiliary, Gregory M. ("Greg") Riedl, Vice President, John T. Dale, Jr., President, Warren P. Miguez, Secretary, Richard F. Price, Jr., Treasurer
 Back row, l. to r.: Ronald K. ("Ron") Munn, William H. ("Bill") Strait, David V. Dufour, Michael A. ("Mitch") Ackal, Jr.
 Missing from picture: Meryl T. Andry, Devin M. Dixey, Scott M. Ham, David A. Seay, Frank D. Steele

UPCOMING EVENTS

Oct. 16	PLANO Fall Golf Tournament Beau Chene, Mandeville, La	CANCELLED DUE TO BAD WEATHER	Jan. 15	PLANO Luncheon The Bourbon House, New Orleans
Oct. 19	AAPL Gulf Coast Land Institute Lafayette, LA		Feb. 1&2	AAPL's NAPE George R. Brown Convention Center, Houston, TX
Oct. 20	AAPL Gulf Coast Land Institute Lafayette, LA		Feb. 15	PLANO Seminar N.O. Hilton Riverside
Nov. 8	HAPL Offshore Social The Corinthian, Houston, TX		Feb. 15	PLANO Executive Night N.O. Hilton Riverside
Nov. 13	PLANO Luncheon Royal Sonesta Hotel, Bienville Suite		Feb. 15	PLANO Sponsor Party Royal Sonesta Hotel
Nov. 30	PLANO Seminar Jones, Walker Offices, New Orleans		Feb. 20	MARDI GRAS – NEW ORLEANS, LA HOLIDAY
Nov. 30	PLANO Winetasting Jones, Walker Offices, New Orleans		Mar. 12	PLANO Luncheon Andrea's Restaurant, Metairie, LA
Dec. 12 (Tues)	PLANO Luncheon Galatoire's, Bourbon Street		Mar. 14	OCS Lease Sale 201 New Orleans, LA
Dec. 14	PLANO Christmas social Napoleon House, New Orleans, LA		Mar. 14	PLANO's OCS Lease Sale 201 Breakfast New Orleans, LA

PLANO DEMONSTRATION GARDEN

Submitted by:

Jo Ann P. Anderson, PLANO Auxiliary President
and Margo Cameron, PLANO Administrator

Hurricane Katrina, followed by the flooding due to the break in the 17th Street Levee, took a heavy toll on New Orleans City Park, including the Botanical Garden and PLANO's Demonstration Garden. Buffeting winds and flood waters devastated the area, so much so that it will take years to bring the park back to its former glory, even though financial backing from both the State of Louisiana and the City of New Orleans is well nigh non-existent.

To return New Orleans to a state of normalcy, commercial, residential and recreational areas have to be restored, allowing citizens of, and visitors to, this great city to enjoy the many facilities previously available to them. One of the first areas tackled was the New Orleans Superdome. Repairs were performed in record time, and the Saints have proven themselves to be capable of giving all of us a great sense of pride and joy in their accomplishments.

Next in turn came City Park, truly one of the great parks in these United States. With limited staff and very little financial back, maintenance personnel at the park have performed miracles, but not wholly alone. Enter a group of citizens living in the area who persuaded neighbors to go to the park with lawnmowers and start mowing grass. Thus was formed the City Park Mow-Rons who have donated their time and service free of charge to ensure that the entrance to the park immediately in front of the Museum of Art is maintained. The entrance

is "manicured" regularly and has a most pleasing appearance.

A visit to the Demonstration Garden, donated by PLANO to the New Orleans Botanical Garden in 2003, was made a week or so ago to check on its condition. All in all, it appeared to be in good condition as Park maintenance personnel had worked extremely hard to bring it back to its original condition. The two small garden gazebos built in the 1930's under the auspices of the WPA program, were particularly pleasing to the eye. It was comforting and heart-warming to see that the rose trees had survived the storm, as evidenced in the picture below.

Unfortunately, one casualty of the storm was the magnificent teak bench donated by the Garden Clubs of New Orleans to the garden. Floodwaters had left their mark. Careful cleaning, and expert sanding and staining will no doubt work miracles on the bench. Abundant varieties of flowers and plants were less fortunate. They will have to be replaced, as well as many of the bird feeders. Other casualties were the age-old trees in the area. Many of them had their canopies sucked out by tornadoes, leaving them with somewhat grotesque shapes.

The Demonstration Garden remains a tranquil and informative spot for visitors. It has a most charming quality, and one that not even Hurricane Katrina could destroy. You are urged to visit and enjoy it knowing that PLANO made that Garden possible!



Extract from the New Orleans Times-Picayune, Saturday, October 21, 2006.

"Botanical Rebirth:

...."More than 100 members of the master gardeners' group have helped tremendously with the garden's restoration, and they'll be working this weekend, too. A steady stream of volunteers have pitched in. Last week, a group of five were potting plants.

"Dominion Oil came out here Tuesday with 80 people, and we had projects for them," Soniat said, showing off bright new sod in the PLANO garden that the group put in.

"And the Starwood Hotel group helped replant a lot of the train garden."

PLANO LEGAL UPDATE
IMPORTANT CHANGES TO
RECLAMATION AND ADMINISTRATIVE
EXPENSE CLAIMS IN BANKRUPTCY

*Submitted by: Tara Gayle Richard
Jones, Walker, Waechter, Poitevent,
Carrere & Denègre*

After much fanfare, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) went into effect on October 17, 2005. In addition to the much-publicized changes to the consumer bankruptcy laws, BAPCPA revised the reclamation rights of trade creditors and provided additional administrative expense priority to trade creditors under certain circumstances.

The changes mentioned below apply to bankruptcy cases filed on or after October 17, 2005. In a nutshell, the changes afford trade creditors an increased 45-day reclamation period, as well as an administrative expense priority claim for goods shipped to the debtor 20 days before the buyer filed its bankruptcy petition.

Under certain circumstances, the Bankruptcy Code provides suppliers of goods (*but not services*) expanded rights or reclamation, which allow a trade creditor to reclaim goods, under state law. It must be noted at this juncture, however, that sellers who discover a buyer's insolvency can make reclamation claims under state law prior to the filing of the buyer's bankruptcy.

The prior Bankruptcy Code essentially only allowed a trade creditor to reclaim goods that were shipped ten days before the bankruptcy filing or 20 days under certain circumstances. Revised Section 546(c)(1) of the Bankruptcy Code now provides that the rights and powers of the trustee are subject to "the right of a seller of goods that has sold goods to the debtor, in the ordinary course of such seller's business, to reclaim such goods if the debtor has received such goods while insolvent, within for 45 days before the date of the commencement of a case under this title..." In order to take advantage of the 45-day look-back period

for reclamation claims, sellers must make a written demand of reclamation of such goods "not later than 45 days after the date of receipt of such goods by the debtor, or not later

than 20 days after the date of commencement of the case, if the 45-day period expires after the commencement of the case." Section 546(c)(1)(A-B). The buyer also must have been insolvent when it received the goods and must still possess the goods when written demand is made. These expanded reclamation rights, however, are subject to the prior rights of a holder of a security interest in such goods or proceeds thereof. Section 546(c)(1).

Suppliers of goods are also afforded a new administrative expense claim for the value of goods delivered by the supplier to the debtor within 20 days of commencement of the bankruptcy case. Section 503(b)(9). This available remedy is given to sellers who fail to comply with the reclamation requirements noted above and to those not otherwise entitled to relief on the reclamation demand.

Under revised Section 503(b)(9), a trade creditor must assert its administrative claim in the Bankruptcy Court and give notice to other creditors. It must also receive the court's approval for allowance and payment of this claim. In its pleading before the court, the trade creditor must show that

"the goods were sold to the debtor in the ordinary course of such debtor's business." Immediate payment of this administrative expense claim, however, is not assured.

BAPCPA contains other changes that will affect creditors. Changes to a trade creditor's rights in the Bankruptcy Code may necessitate changes to how creditors address the insolvency of its buyers.

About the Author

Tara Gayle Richard was admitted to the Louisiana Bar in 1999, and the Texas Bar in 2000. She joined Jones Walker as an associate in the firm's litigation section in 2000 after completing a clerkship with the Honorable Catherine D. Kimball, Associate Justice of the Louisiana Supreme Court. Ms. Richard primarily practices in the fields of bankruptcy, creditors-debtors rights, and environmental and energy law. She also handles other commercial litigation matters. Since joining Jones Walker, she has worked on class action litigation, citizen suits, environmental enforcement actions, toxic tort claims in Louisiana and Texas, and has represented creditors and debtors in bankruptcies under Chapters 7, 11 and 13.



PLANO NEWS



*At podium, Secretary Scott A. Angelle,
Louisiana Department of Natural Resources*

Hotel Inter-Continental, Pontalba Room, was the setting for the October 2nd membership luncheon, at which a record crowd was present. Secretary Scott A. Angelle of the Louisiana Department of Natural Resources opened his remarks by calling upon the assembled audience to consider two of the most important words in the language - focus and passion! Focus, for without it forward planning of any project could possible miss key factors, and passion for without that nothing would be accomplished. A few examples were cited, followed by his delivery of an excellent update on coastal and energy issues in Louisiana, opening his remarks with a brief outline of the oil and gas infrastructure in Louisiana, namely:


1. Louisiana hosts 80% of America's offshore oil and gas production and distribution.
2. 34% of the nation's natural gas supply and almost 30% of the nation's crude oil supply is either produced in Louisiana, produced offshore Louisiana, or moves through the state and its coastal wetlands. This production is connected to nearly 50% of the country's refining capacity.
3. Louisiana alone hosts more than 16% of the total U.S. refining capacity, second only to Texas.
4. Home of the Strategic Petroleum Reserve.
5. Louisiana Offshore Oil Port is the only port in the nation that can handle large supertankers from the Persian Gulf. This port alone is responsible for some 13% of America's foreign oil supply.
6. Louisiana is home to America's most recently permitted LNG facility as well as America's largest LNG facility.
7. In addition, we produce 30% of our nation's fisheries, and catch and drain 41% of the continental United States.

Secretary Angelle ended his talk by giving a report

on the Federal OCS Leasing Program, in particular Lease Sale 200 held in New Orleans on August 16, 2006. It is widely known that the State of Louisiana attempted to block this sale. U.S. District Court Judge Kurt D. Englehardt rejected LA Governor Blanco's suit to block the sale. Extracts from his ruling are given below.

- On six occasions (Pages 3, 19, 28, 31, 421, 43) the judge indicates the state has a "likelihood or substantial likelihood of prevailing on the merits." He even states on Page 43, "a substantial (if not imminent) likelihood of prevailing on the merits."
- On Page 21 the judge states, "In this case the plaintiffs have demonstrated that there indeed is new information perhaps in abundance, pertaining to the significant impacts Hurricanes Katrina and Rita had on the entire coastal area of Louisiana."
- On Pages 42 and 43 the judge makes it very clear that the federal government's compliance with the applicable federal laws is "questionable at best." The judge further states, "injunctive relief to ensure compliance may well be in order." Finally, the judge warns prospective bidders for Lease Sale 200 to be aware of "the risks associates with the apparent failure of MMS and/or DOI to satisfy their obligations: and indicates they "may employ the doctrine of caveat emptor (buyer beware) on August 16, 2006.
- On Page 25 the judge indicates that the consistency determination did not "adequately evaluate all of the relevant enforceable policies of the LCRP and it would appear to have been compiled in an arbitrary and capricious manner . . .".
- Further on Page 25 the judge states, "nowhere does the record provide for mitigation of impacts on Louisiana's coastal resources."
- On Pages 26 and 27 the judge cites, "a flawed analysis, and one based on stale information . . .".
- On Page 28 the judge cites, "It is apparent the cavalier approach adopted to these critical issues rendered a seemingly inadequate result, and one that might fall below the arbitrary and capricious standard."

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Harold J. Anderson, CPL
President

THE DEEPWATER ROYALTY RELIEF PRICING THRESHOLD DILEMMA

*Submitted by J. Keith Couvillion
Deepwater Land Manager,
Chevron U.S.A. Inc., Houston, TX*

Earlier this year an article was published in the New York Times highlighting the fact the Minerals Management Service (MMS) had inadvertently failed to include certain royalty relief price threshold provisions in various Gulf of Mexico deepwater leases issued in 1998 and 1999. These provisions would require royalty to be paid, and relief suspended, when product prices were high. Even though the missing price threshold provisions were not a secret to lessees holding those leases, MMS had not widely advertised the fact the provisions were left out of the leases. After the article was published implying U.S. taxpayers would lose billions in royalties as a result of this oversight, a firestorm began to develop within the halls of Congress and in the Department of the Interior. Accusations of cover-up, bribery and coercion became common discussion topic in Washington, especially from those demanding an explanation from MMS. The General Accounting Office estimated the federal government will lose up to \$10 Billion in royalty payments as a result of this oversight. While this estimate may be a little inflated, the price threshold issue has nevertheless outraged members of Congress and they have begun to take steps to ensure these perceived lost royalties are recouped.

On November 28, 1995, President Clinton signed public law 104-58 which included provisions mandating royalty relief for offshore federal Gulf of Mexico leases acquired in water depths greater than 200 meters. The provisions in the law dealing with deepwater royalty relief became known as the Deepwater Royalty Relief Act (DWRRA). The primary purpose of the Act was to encourage industry to explore in frontier areas in the Gulf of Mexico when

product prices were low. As stipulated in the law, MMS was required during the first 5 years after enactment to grant deepwater leases with provisions stating royalties would be suspended for specific volumes of production. The law stated that suspension of royalties would be automatic on volumes of not less than 17.5 million barrels of oil equivalent (MMBOE) for leases located in water depths between 200 and 400 meters, 52.5 MMBOE for leases issued in water depths between 400 and 800 meters, and 87.5 MMBOE for leases located in water depths greater than 800 meters. Once these production volumes had been exceeded, the payments of royalty would commence. One of the provisions stated in the DWRRA that caused the ripple throughout Washington on the price threshold issue was

Section 303. This section added a new bidding system MMS could use in offering offshore lands for lease. In the Act, Congress directed this bidding system be used for the first five years after enactment. As Congress wished, in 1996 MMS began offering deepwater leases with provisions suspending the payment of royalties. MMS also decided the payment of royalties would be reinstated, and royalty relief suspended, when product prices exceeded certain product price thresholds. It is believed MMS derived its authority, in part, to include price thresholds in the leases as result of Section 303 of the DWRRA. The threshold prices were established in 1994 and have been adjusted for inflation each year since inception of the DWRRA program. The price threshold provisions, or lack thereof, in the deepwater leases issued from 1998 and 1999 have caused most of the anxiety MMS has experienced on this topic this year.

About the Author

J. Keith Couvillion is the Deepwater Land Manager supporting Chevron's Deepwater Gulf of Mexico Exploration and Projects Business Unit located in Houston, TX. Mr. Couvillion joined Texaco in late 1979 and has worked either onshore or offshore for the past 27 years in many capacities supporting Texaco's, and now Chevron's, exploration and production operations in the Gulf of Mexico region. He has held the positions of Landman, District Landman, Offshore Land Manager, New Orleans Production Operations Land Manager and Land Consultant. Mr. Couvillion has been involved in the offshore portion of the land profession since late 1985 when he transferred from Houston to Texaco's Southern Exploration Division in New Orleans. In 1997, Mr. Couvillion assumed the responsibility of Offshore Land Manager for Texaco's New Orleans based business unit. In November of 2001, he accepted a position with the newly formed ChevronTexaco organization (now Chevron) and an in-house Land Consultant.

Mr. Couvillion is active in many industry trade and professional associations supporting Gulf of Mexico OCS activities and currently serves as Co-Chairman of the API led Marine Wildlife Issues Group. Mr. Couvillion is a frequent presenter in industry forums addressing offshore issues.

Mr. Couvillion graduated from Lamar University in 1978 and 1979 where he obtained both a Bachelors and Masters Degree in Business. He has been married for 27 years and has two children.



DEEPWATER RELIEF continued

After passage of the DWRRA, MMS began adding an addendum to its newly issued deepwater leases describing the application of royalty relief. On January 16, 1998, MMS published in the Federal Register a final rule detailing the implementing regulations of the DWRRA. As a result of this final rule being issued, MMS decided it was no longer necessary to add an addendum to the deepwater leases. As a substitute for the addendum, MMS elected to add a footnote to the front page of the leases to address royalty relief. The footnote stated, "This lease may be eligible for royalty suspension pursuant to PL 104-58. If eligible, Sections 5 and 6 of this lease instrument will be superseded by 30 CFR Part 260, published in the Federal Register on January 16, 1998 (63 FR 2626)." In theory the footnote would have worked very well, but because the footnote referenced documents that did not contain all the provisions applicable to royalty relief as stipulated in the addendum previously used, the pricing threshold issue was created.

Royalty relief has two primary components, volume suspensions and price thresholds. Once production begins on a qualified lease, or in a unit including a qualified lease, the payment of royalty is suspended until either the production volume cap is reached or the averaged price of oil or gas in a calendar year exceeds the price thresholds established by MMS. The production volume suspension amounts are stated in the DWRRA and in the current regulations. The price thresholds are not stipulated in either the DWRRA or the implementing regulations for deepwater leases issued during 1996 through 2000 in the Gulf of Mexico. The addendum MMS added to the deepwater leases in 1996 and 1997 had both the production volume and price threshold amounts specifically stated. Because the addendum was excluded for the leases in 1998 and 1999, and due to the fact no price threshold language existing in either the law or implementing regulations, the footnote used by MMS in 1998 and 1999 was not sufficient to subject the leases to price thresholds. In 2000, MMS realized the pricing threshold language was missing from both the law and regulations and reinstated the use of the addendum to address the deficiency. The new addendum referenced the same documents as the footnote, but also added

specific pricing threshold language. As a result of this correction, during the first five years of the deepwater royalty relief program, leases issued in 1996, 1997 and 2000 were subject to price thresholds while leases issued in 1998 and 1999 were not. Without price thresholds, lessees would enjoy royalty free production up to the production volume caps stipulated in the DWRRA.

In the summer of 2006 MMS sent letters to those lessees holding interest in the 1998 and 1999 leases inviting lessees to meet with MMS to discuss the lack of price thresholds in their leases and discuss options for rectifying the MMS oversight. It was originally believed 56 companies held interest in the still active 1998 and 1999 leases which numbered over 500. At least 10 of those companies have met with MMS and are engaged in some level of discussions. A few companies have publicly stated they are prepared to sign an agreement with MMS which in effect would subject their interests in their 1998 and 1999 leases to price thresholds. Since what is being discussed with the current owners of the 1998 and 1999 leases is not an amendment to the leases themselves, not all undivided interest owners will have to sign the agreements concurrently. At this point in time, MMS envisions separate agreements will be signed with each lessee interested in resolving this issue.

Congress has various pieces of legislation pending which would encourage owners of 1998 and 1999 leases to negotiate an agreement with MMS. Some of these pending bills penalize lessees who fail to agree to subject their leases to price thresholds. Penalties being debated range from imposing new fees on production when royalty is not being paid once product prices reach certain targets to banning companies who fail to sign agreements with MMS from acquiring new offshore federal leases. Whether or not any of the encouragements Congress is contemplating will become law is unknown, however, due to the fact threats of being penalized are real, many lessees are either engaged in discussions with MMS or considering what to do next. Over the next few months it will be very interesting to see how resolving the price threshold issue unfolds.

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Regretfully, due to bad weather, the

PLANO FALL GOLF TOURNAMENT

scheduled to take place on

MONDAY, OCTOBER 16, 2006,

had to be cancelled.

This event will not be rescheduled.

Payments submitted to PLANO covering registration fees, sponsorships, etc. are in the process of being refunded.

Please accept our apologies for any inconvenience caused.

Rob Schroeder & Bill Johnson
PLANO Golf Committee

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PLANO LUNCHEON

MONDAY, NOVEMBER 13, 2006
11:30 A.M.

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\$35.00/person NON-PLANO Member paid in
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