



PLANO

Professional Landmen's Association of New Orleans

JUNE, 2005

www.planoweb.org

PLANO BULLETIN #038

June 6 PLANO Luncheon Royal Sonesta Hotel Bienville Suite	June 29- July 1 AAPL Annual Convention Banff, Alberta, Canada
July No PLANO Monthly Luncheon	Aug. 6 HAPL Annual Skeet Shoot American Shooting Center
August No PLANO Monthly Luncheon	Aug. 24-25 AAPL Summer NAPE George R. Brown Center, Houston
Aug. 12 PLANO's Demonstration Garden Reception N.O. Botanical Garden	Sept. 26 HAPL Annual Golf Tournament Kingwood Country Club
Oct. 6 PLANO Fall Icebreaker Reception Hotel Monteleone, New Orleans	Oct. 6-7 AAPL's Gulf Coast Land Institute Hotel Monteleone, New Orleans
Oct. 17 PLANO Fall Golf Tournament Beau Chene Golf & Country Club, Mandeville	Oct. 13 HAPL Annual Executive Night Hyatt

PLANO LUNCHEON
MONDAY, JUNE 6, 2005, 11:30 A.M.
ROYAL SONESTA HOTEL, BIENVILLE SUITE
300 BOURBON STREET
NEW ORLEANS, LA

PLANO's June luncheon is fast approaching - June 6th.

At this luncheon, you will have an opportunity to welcome (a) the incoming PLANO Board representing your interests for the next year, (b) the four new Directors taking office July 1st, to serve a three year term, i.e. July, 2005, through June, 2008, and (c) show your appreciation for the services rendered by those Directors completing their stint of duty ending June 30th of this year. Those "going off" the Board at the end of June are:

1. Andrew M. Adams, Gieger, Laborde & Laperouse, LLC, New Orleans, LA;
2. Scott A. O'Connor, Gordon Arata, McCollam, Duplantis & Eagan, L.L.P., New Orleans, LA;
3. Wm. David Briggs, Legacy Resources Co., L.P., Mandeville, LA; and
4. Frank D. Barber, III, Taylor Energy Company, New Orleans, LA.

PLANO Awards are to be issued at this luncheon.

We look forward to a large turnout. If you have not yet made your luncheon reservation, you are urged to do so by calling Margo Cameron at 504-593-7560 without delay.

MESSAGE FROM THE PLANO PRESIDENT 2004-2005



As I sit down to write my final monthly message, I'm very much surprised at how quickly my tenure as PLANO President has gone by. Of course, that tenure began with a surprise; last August I was planning on putting in a term as Vice President (a position which demands a certain amount of effort, so thanks to Andy Adams for replacing me in that position) when Bill Gordon got his chance to go on an overseas assignment.

So there we were, and here we are.

During the past term, the Board of Directors has worked hard to represent you, the members PLANO. I am indebted to them for that representation and for the effort they, along with Margo Cameron, devoted to handling the many tasks that crop up in the course of a year at PLANO.

I would also like to take this opportunity to once again thank those of you who are PLANO Sponsors for your support this year. Your contributions make the job of running PLANO much easier inasmuch as they allow the Board to focus on what should be done and how to do it without having to worry too much about how to pay for it.

Unfortunately, I can't limit this final message to happy news. Last month saw the passing of a stalwart member of PLANO, Jan van Loon. For those of you who knew Jan, I'm sure that your memory is of a friendly, avuncular fellow who was having a good time no matter what the situation was.

What you may not know is how much effort Jan devoted to organizing and managing PLANO's educational seminars over the last few years. His efforts were invaluable and he will be extremely difficult to replace.

It has been the intention of the Board for some time now to present Jan with a special award to recognize his efforts in this regard. Unfortunately, Jan's medical situation did not allow him to attend any PLANO functions for the past months and in spite of our hopes for some improvement, a presentation was not possible.

PLANO traditionally presents our annual awards at the June luncheon meeting. At the upcoming luncheon meeting, we will also honor Jan's memory by presenting him with a posthumous award for his untiring efforts on behalf of PLANO.

I hope to see you there.

It has been a pleasure and an honor to serve as your President.

Lawrence P. ("Larry") Beron, PLANO President



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PLANO LUNCHES

REMINDER – What’s a ghost? Well, when an event reservation is made but not used, PLANO is left with a “ghost” on the reservation list. Three (3) working days, i.e. 72 hours, prior to events, PLANO is required to guarantee the number of attendees, thus establishing the cost involved. This is a standard procedure in the catering world. Persons who do not show up, or cancel after the guaranteed number has been issued, are regarded as “ghosts” for they cost PLANO just as much as actual attendees. PLANO has to pay, and over the course of a year, this can add up to quite an expense.

So, please help us out. If you’ve made a reservation for an event, that’s great. We look forward to seeing you there. If things get busy and you can’t make it, we’ll miss you, but please make a call as soon as you know and let the event organizer know that you won’t be there. Calling after the guarantee has been issued will only serve to notify us you will not be there, but we will still have to pay, and, in turn, we will have to bill you. Rarely, if ever, can adjustments be made to the orders.

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PLANO MEMBERSHIP

The purpose of PLANO is. . . *“To promote and advance the art and science of the profession of Petroleum Landman.”* With that in mind, we urge all of our members to each bring in at least one new member between now and the end of this year. A membership form is available on the PLANO Web Site – www.planoweb.org - so be sure to ask any and all potential new members to join **PLANO NOW.**

THOUGHT FOR THE DAY

Take Care of Your Reputation.
It's Your Most Valuable Asset

Submitted by
Margo Cameron, PLANO Administrator &
PLANO Newsletter Editor

VOLUNTEER NEEDED

Photographer for photo-taking at PLANO events
on an as-needed basis.

Call Margo Cameron, PLANO Administrator,
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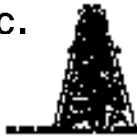
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LOUISIANA LEGAL UPDATE

OIL & GAS LAW DEVELOPMENTS

CASES OF INTEREST

Presented by Gordon T. Whitman
The Onebane Law Firm, Lafayette, Louisiana
1-337-237-2660

Louisiana Third Circuit Holds Landowner May Sue For Surface Restoration Of Lands During Term Of Lease When Operations Have Been Completed.

A mineral lease (*the "Lease"*) was granted in 1927 covering certain lands (*the "Lands"*) in Cameron Parish, Louisiana. Operations commenced in 1931 and continue to the present day. The landowner (*the "Landowner"*) filed suit against the past and present mineral lessees (*collectively referred to as the "Lessee"*) for damages to the Land asserting claims based upon (a) negligence, (b) breach of contract, (c) restoration, (d) exemplary damages, (e) trespass, (f) maritime tort. The Landowner also sought general and punitive damages, and the costs associated with cleaning up and restoring the Lands. Lessee filed an exception of prematurity urging that such a suit could not be filed since the Lease was still in effect. The trial court agreed and held for the Lessee and dismissed the law suit without prejudice. The Landowner appealed. The Third Circuit Court of Appeal reversed in part and held suit may be filed for surface restoration due to negligent or unreasonable use of same by the Lessee, provided operations have been completed as to the lands in question, and remanded the case. *Dore Energy Corp. v. Carter-Langham, Inc.*, 2005 WL 1027927 (La. App. 3rd Cir. decided May 4, 2005).

The above case dealt with an exception of prematurity, that is, the Lessee argued the suit should not have been filed prior to termination of the Lease. The Court based its decision upon the facts as plead in the Petition and Amended Petition filed by the Land-Owner. Accordingly, the facts of this case are somewhat sketchy. The Court held that a landowner may file suit for surface and restoration damages during the life of the subject mineral lease unless the Lease provides to the contrary, provided that operations have been completed on the portion of the lands in question.

To reach this result, the Court first had to deal with *Corbello v. Iowa Production*, 850 So.2nd 686 (La. 2003), which unequivocally stated that such suits cannot be

filed until after the lease has terminated. It stated at page 703:

The duty to repair the leased premises does not arise until the lease expires, at which time the lessee must return the property in good order. The 1929 mineral lease is still in effect and is not the subject of this litigation. Thus, even the present leaseholder does not yet have a duty to repair under the terms of that lease.

The trial court relied upon the above language in holding the lawsuit was premature and dismissed the case. The Court of Appeal, however, specifically rejected the above as dicta and unnecessary to the Supreme Court's holding in *Corbello*.

Having decided that it was not bound by the *Corbello* decision, it then quoted from the recent Louisiana Supreme Court decision regarding the Lessee's duty to restore the surface in *Terrebonne Parish School Board v. Castex Energy, Inc.*, 893 So.2nd 789, 798:

"This court's recent decision in *Corbello* also involved an express lease provision obligating the lessee, upon termination of the lease, to "reasonably restore the premises as nearly as possible to their present condition." The court emphasized that the lease terms constituted the law between the parties, and specifically relied upon general principles of contract interpretation to find that the defendant was required to restore the surface to its original condition regardless of the underlying value of the land. * * *

Unless provided for in the lease, the lessee is not responsible for damages which are inflicted without negligence upon the

About the Author

Gordon T. Whitman: Born New Orleans, Louisiana, January 25, 1955; admitted to Bar, 1981, Louisiana. Education: University of Southwestern Louisiana (S., 1977); Louisiana State University (J.D., 1981). Phi Kappa Phi; Phi Delta Phi; Order of the Coif. Member, Louisiana Law Review, 1980-1981. Speaker, 46th Annual Meeting and 2000 International Conference of American Association of Professional Landman; Speaker, 45th Annual Meeting and 1999 International Conference of American Association of Professional Landmen; Speaker, 43rd Annual Meeting and 1997 International Conference of American Association of Professional Landmen. Member: Louisiana State Assistant Examiner for Committee on Bar Admissions (1993-2002), and American Bar Association; Lafayette Association of Petroleum Landmen; Professional Landmen's Association of New Orleans; American Association of Professional Landmen; Louisiana Independent Oil and Gas Association; Louisiana Association of Bank Counsel; Advisory Council to Louisiana Mineral Law Institute.

Areas of Practice:
Oil and Gas, Business



LOUISIANA LEGAL UPDATE continued

lessor's property in the course of necessary drilling operations.

Moreover, when the damaging of the Lessor's property by the mineral Lessee is not negligent per se, the Lessor must prove that the injury was caused by unreasonable or negligent operations of the lease."

The Court of Appeal acknowledged that the Lessee cannot be responsible for surface restoration after the Castex Energy case "absent proof that the Lessee has exercised his rights under the lease unreasonably or excessively." 893 So.2d at 801. However, it reviewed the Petition and noted that the Landowner had alleged "negligent use" by the Lessee. Presumably, the Court felt it necessary to mention this since absent such allegations, it would have simply dismissed the law suit.

At this point, the Court then addressed the issue before the Court, that is, whether law suit was prematurely filed. The Court first noted there was no express provision requiring such claims be brought "upon termination of the lease." It then reviewed the case of *Isadore v. Probe Offshore, L.L.C.*, 815 So.2d 876 (La. App. 3rd Cir. 2001), which held that the duty to repair damages under a mineral lease exists "upon the completion of the operations." While it acknowledges that this case had been overruled by Castex Energy insofar as the extent of the obligation to

restore, the Court held that the holding of when such a duty arises is still valid.

It should be noted that this case deals with a mineral lease that does not contain a specific surface restoration provision. This is in accord with the facts of the Castex Energy decision which limits the liability of the Lessee as noted above. If the mineral lease contains such a provision, then that provision will control when suit may be filed. As noted in Corbello, such provisions may expressly provide that the obligation to restore arises upon termination of the lease.

The above decision is not reported and is not yet final. Should this decision change upon further appeal, we will report on same.

**Copies of this case can be obtained upon request to the writer at
(337) 266-1232 (fax)
or whitmang@onebane.com (e-mail).**

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IN MEMORIAM

Jan Thomas van Loon passed away Monday, May 9, 2005, in Dallas, TX. He was born in New Orleans, LA, on August 24, 1945. Jan is survived by his wife, Iris L. Bradley, step-daughter, Susan E. Gleiser; daughter, Lauren Romanauskas and husband, Alex Romanauskas; grandsons, Gabriel and Rowan Romanauskas; sisters, Bobbie Coats-Wondrasch and husband, Frank Wondrasch; Emily van Loon and husband, Thom Wolfe; brother, Rick van Loon; and numerous nieces and nephews.

Jan attended St. Martin's Episcopal School in New Orleans, Louisiana State University and LSU Law School. He was active in the oil and gas industry for more than 30 years, starting as a landman for Chevron Oil Company in New Orleans. At the time of his death, Jan was with the law firm of Oats & Hudson in New Orleans, Lafayette and Baton Rouge, LA. He was also involved in the American Association of Professional Landmen where he held every Committee Chairmanship at one time or another, and served on the Executive Committee twice. He was also a member of the Professional Landmen's Association of New Orleans ("PLANO"), Dallas and Houston. While serving on the Board of PLANO, Jan

set up many excellent educational seminars, the last one branching out into a video-conferenced event in conjunction with HAPL in April of this year. He was also a former member of the Board of Directors of Easter Seals of Louisiana, the Mardi Gras Krewe of Alla, State Fair of Texas Chairman's Task Force, and active with youth events at Highland Park United Methodist Church.

Jan loved to smile and make others smile. He had a strong work ethic, drive and good humor. No matter how busy, Jan always took time to help others in any way he could. He will be sorely missed by all of us.



GULF OF MEXICO - THE OFFSHORE 5-YEAR LEASING PROGRAM

*Submitted by J. Keith Couvillion
Land Manager GOM Deepwater Exploration &
Production, ChevronTexaco, Houston, TX*

The Minerals Management Service (MMS) has spent the last few months contemplating what the new 2007-2012 Five (5) Year Offshore Leasing Program

(5 Year Plan) should look like. Since it takes a minimum of two (2) years to develop a comprehensive plan, starting the dialogue early is always the best approach. Even though the existing plan (2002-2007) will not expire until the end of June in 2007, due to the extensive time it takes to work through the necessary steps to create a new plan, starting now increases the possibility a new leasing program will be in place before the existing program expires. Implementing and maintaining a 5 Year Plan is the first step the federal government must take if it plans to continue to offer offshore federal lands for lease. Without an approved 5 Year Plan, there is no mechanism to allow the leasing of offshore lands.

As MMS begins development of the new leasing program process, under the direction of the Secretary of the Interior (Secretary), the debate over whether or not to allow offshore exploration and development in areas currently subject to moratoria is growing both in Washington, DC and along many coastal states. Offshore drilling continues to be an emotional topic where passions run high on both sides of the debate and where posturing to influence the direction this country will take on energy issues is at its finest.

As the debate heats up on the 5 Year Plan, it is timely to remind those of us working in offshore why and how the 5 Year Plan works, and to give those not familiar with offshore a better understanding of the process MMS must follow in creating the next 5 Year Plan. Below is a summary of the legislative mandates and implementing regulations and procedures that create the foundation for the 5 Year Planning process.

Under Title 43, Chapter 29, Subchapter III, Section 1344 of the United States Code, the Secretary is mandated to "prepare and periodically revise, and maintain an oil and gas leasing program to implement the policies of this subchapter.

The leasing program shall consist of a schedule of proposed lease sales indicating, as precisely as possible, the size, timing, and location of leasing

activity which he (or she) determines will best meet national energy needs for the five-year period following its approval or re-approval. Such leasing program shall be prepared and maintained in a manner consistent with the following principles:

(1) Management of the outer Continental Shelf shall be conducted in a manner which considers economic, social, and environmental values of the renewable and non-renewable resources contained in the outer Continental Shelf, and the potential impact of oil and gas exploration on other resource values of the outer Continental Shelf and the marine, coastal, and human environments.

(2) Timing and location of exploration, development, and production of oil and gas among the oil and gas bearing physiographic regions of the outer Continental Shelf shall be based on a consideration of—

(a) existing information concerning the geographical, geological, and ecological characteristics of such regions;

(b) an equitable sharing of developmental benefits and environmental risks among the various regions;

(c) the location of such regions with respect to, and the relative needs of, regional and national energy markets;

(d) the location of such regions with respect to other uses of the sea and seabed, including fisheries, navigation, existing or proposed sea lanes, potential

sites of deepwater ports, and other anticipated uses of the resources and space of the outer Continental Shelf;

(e) the interest of potential oil and gas producers in the development of oil and gas resources as indicated by exploration or nomination;

(f) laws, goals, and policies of affected States which have been specifically identified by the Governors of such States as relevant matters for the Secretary's consideration;

About the Author

J. Keith Couvillion is the Land Manager GOM Deepwater Exploration and Production with Chevron Corporation, Houston, TX. Prior to the merger between Texaco and Chevron, Keith was Texaco's Offshore Land Manager for the Gulf of Mexico. Besides his Chevron Corporation responsibilities, Keith is active in various industry associations, including API, AAPL, NOIA and others. He has been involved in the oil and gas industry for 24 years, working the last 18 years offshore.



GULF OF MEXICO continued

(g) the relative environmental sensitivity and marine productivity of different areas of the outer Continental Shelf; and

(h) relevant environmental and predictive information for different areas of the outer Continental Shelf.

(3) The Secretary shall select the timing and location of leasing, to the maximum extent practicable, so as to obtain a proper balance between the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone.

(4) Leasing activities shall be conducted to assure receipt of fair market value for the lands leased and the rights conveyed by the Federal Government.”

To ensure the Secretary complies with the guiding principles mandated by law in developing the 5 Year Plan, the Secretary has established a procedure that MMS must follow in the creation, review, modification and ultimate approval of the 5 Year Plan. This procedure starts with the solicitation of interest from interested parties as to whether or not any of the 26 offshore planning areas offsetting the coasts of the continental U.S. and Alaska should be included in the Plan. Lease sales are normally conducted covering only one planning area. Occasionally the Secretary will combine planning areas for a single lease sale, but this is the exception not the rule. As part of the solicitation of interest process, the Secretary actively seeks input not only from the public but also from members of Congress, the White House, other federal government agencies and State and local governments. State governments are especially important and will be consulted numerous times during the planning process. In addition to gathering comments from all interested stakeholders, the Secretary is required to conduct a comprehensive study of the areas or regions to be included in the Plan to assess the “environmental impacts on the human, marine, and coastal environments of the outer Continental Shelf and the coastal areas which may be affected by oil and gas or other mineral development in such area or region.” The Secretary has put in place procedures which direct MMS to conduct these environment assessments and the preparation of Environment Impact Statements (EIS) as necessary. Gathering comments from stakeholders, and assessing the environmental impact of oil and gas activity offshore, are

important elements to ensure compliance with the guiding principles described above.

During each major step in the 5 Year Planning process MMS publishes a notice in the Federal Register soliciting comments. Below is a general outline regarding the anticipated timing for these notices for the new 5 Year Planning process:

- Request for Comments and Information – 45 day period (Winter/Spring 2005)
- Draft Proposed Program – 60 day period (Summer 2005)
- Proposed Program and Draft EIS – 90 day period (Summer 2006)
- Proposed Final Program and Final EIS – 60 day period (Late 2006)
- Program Approval (Early 2007)
- Current Program Ends and New Program Begins (July 1, 2007)

As stated above, the whole process of creating a new 5 Year Leasing Program takes approximately two years if there are no major interruptions in the schedule. Should an issue arise that causes the process to significantly slow down or stop, lease sales scheduled in the beginning of a new Plan period (2007-2012) could be postponed

Currently only about 11% of the 1.76 billion offshore acres under U.S. jurisdiction offsetting the lower 48 states and Alaska are available for leasing. Most of the restrictions placed on this acreage are due to Congressional or Presidential moratoria, or administrative deferrals created by the Secretary. As MMS begins advertising its intent to prepare a new 5 Year Plan, members of Congress have begun lobbying Secretary Norton to consider including or excluding moratoria, or deferred areas, from the MMS’ analysis of the lands to be considered for future leasing. The Secretary has already received comments promoting a large comprehensive program as opposed to other comments suggesting a very restrictive program. The battle lines are being drawn throughout Washington on offshore leasing. It is apparent as the energy discussion continues in Washington, offshore exploration and development will be a topic of heated debate.

For those of us who are interested in engaging in the debate and voicing our opinions to the Secretary as she directs the 5 Year leasing program process, we should take the time to follow the process and express our opinions when appropriate.

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Membership applications from the individuals named in the this section were reviewed and approved by the PLANO Board of Directors' at the meeting on Thursday, September 28, 2004. The PLANO Board welcomes these new members to the organization.

REMINDER

AAPL'S GULF COAST LAND INSTITUTE
Hotel Monteleone
New Orleans

Thursday, October 6, 2005
&
Friday, October 7, 2005

Formal Notification to be Issued Shortly

PLANO GOLF TALK

PLANO's Spring Golf Tournament was held this year at Money Hill Golf & Country Club, Abita Springs, LA, on Monday, May 16th, a picture and weather perfect day. The event was a total sell out, and greatly enjoyed by all who participated.

PLANO thanks the following sponsors for their support in making the tournament an unqualified success:

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GOLF TOURNAMENT WINNERS

1ST PLACE

Linton Morgan
Brent Bechtol
Jim Bunch
Tom DeGenova

2nd PLACE

Calvin Wood
John Prat
Jim Hunt
Jim Krig

3rd PLACE

Bill Bethea
Larry Staggs
Ham Rogers
Leon Hirsch

4th PLACE

Jay Pepperman
Sonny Lawson
Robert Kincannon
Charlie Hughes

CLOSEST TO HOLE

Hole #4 Jay Pepperman
Hole #8 Brennan Disher
Hole #14 Bill Johnson
Hole #16 Jim Hunt

LONG DRIVE

#10 Ham Rogers



As in the past,
Bill Johnson
and
Bob Schroeder
did a fabulous job in
"scoring" another
successful event.
Both are due a
standing ovation
for this one.



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The PLANO 2005 Sponsor Program is ongoing. For those who wish to become a sponsor, please call Harold J. Anderson @ 504-276-5858, or Margo Cameron @ 504-593-7560.

**PROFESSIONAL LANDMEN'S ASSOCIATION
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