



PLANO

Professional Landmen's Association of New Orleans

OCTOBER, 2004

www.planoweb.org

PLANO BULLETIN #033

PLANO EVENTS

- Oct 11 **PLANO** Fall Golf Tournament
Carter Plantation, Springfield, LA
- Oct 18 **PLANO** Luncheon
Andrea's Restaurant, Metairie, LA
- Oct 28 **PLANO** Seminar & Ice Breaker, Royal Sonesta
- Nov 9 Joint Industry Luncheon, Fairmont Hotel
- Dec 9 **PLANO** Christmas Social
The Napoleon House
- Dec 14 **PLANO** Luncheon
Galatoire's Restaurant

OTHER ACTIVITIES

- Oct 14 HAPL Annual Executive Night, Hyatt
- Oct. 31 Halloween
- Nov. 25 Thanksgiving Day - Holiday
- Dec. 24 Christmas Eve
- Dec. 25 Christmas Day - Holiday
- Dec. 31 New Year's Eve

PLANO LUNCHEON MONDAY, OCTOBER 18, 2004, 11:30 A.M. ANDREA'S RESTAURANT - METAIRIE, LA SPEAKER: JEFF CROUERE, RADIO TALK SHOW HOST

Since January of 1999, Jeff Crouere has been a radio talk show host based in New Orleans, LA. His programs are dedicated to examining the top issues of the day on local, state and national levels. Crouere offers listeners political debate, analysis, and interviews with interesting political leaders and commentators. Currently, Crouere is host of the weekly show *Let's Talk It Over* on WTIJ-FM 94.3, the station where his political commentaries can be heard six times daily.

Jeff Crouere is also host of *Ringside*, a television version of the program that airs on **WLAE-TV, Channel 32**, in New Orleans. Local television viewers can also watch him on **ABC-26 TV** where he has served since 2002 as the political analyst and provides his insight on local, state and national politics.

He has held many leadership positions in the Louisiana Republican Party, including Deputy Chairman and Executive Director. In 2000, he served as the Louisiana Chairman of the Republican National Committee Catholic Task Force. As a Louisiana Republican Party leader and talk show host, Crouere has been interviewed for his perspective by the *New York Times*, national radio networks such as National Public Radio, Talk America, Radio America and Catholic Radio and national cable television networks such as CNBC and MSNBC. The website for the radio and television program (www.ringsidepolitics.com) provides a web poll, political rumors, a schedule of guests and links to a variety of Crouere's columns. He writes commentaries and political columns for a variety of Louisiana publications and Internet sites.

He also is the editor of a weekly e-mail newsletter, which has a circulation of 5,000 readers. Once a month, Crouere hosts a local version of "Politically Incorrect" at Le Chat Noir Theatre in New Orleans called "Politics With a Punch".

At this luncheon Jeff Crouere will discuss the upcoming local and national elections.



MESSAGE FROM THE PLANO PRESIDENT 2004-2005



First and foremost, let me offer one more sigh of relief that Hurricane Ivan's greatest impact on PLANO and our members seems (so far anyway) to have been forcing the cancellation of our seminar and Icebreaker social. When you see the destruction inflicted by this storm on our neighbors to the east, mere inconvenience pales by comparison. We are working to re-schedule the cancelled events and will keep you informed as to the new dates.

As most of you know by now, Bill Gordon, who was recently elected President of PLANO, will be leaving New Orleans for an international assignment with Shell in Miri, Malaysia. I hope that all of you will wish Bill well in his new venture when you have the chance.



As provided in the By Laws of PLANO, the Board of Directors held a special election at our last meeting and elected me, in my capacity as Vice-President, to fill the position of President for the remainder of Bill's term.

While I want all of you to know that I am greatly touched by the Board's decision, I also want you to know that I, along with the Board of Directors, will work to insure that PLANO and its membership will not experience any disruption of our activities as a result of Bill's departure.

Everyone had a great time at the first Luncheon of this, PLANO's fiftieth anniversary year. Past Presidents were well represented and I hope that this will mark the beginning of a new trend in attendance at our luncheons.

The Board of Directors works diligently to make sure that PLANO is a first class professional organization. Please show your support for PLANO by attending the next luncheon, social event, or seminar that you can. We'd all like to see you there.

Thank you.

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



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Independent504-833-2115

Vice President – Andrew M. (“Andy”) Adams
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Immediate Past Pres. – Frank D. Barber, III
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PLANO Auxiliary President – Jo Ann Anderson
Harold J. Anderson, Inc.504-276-5858

PLANO Administrator & Newsletter Editor – Margo Cameron
Dominion Exploration & Production, Inc.504-593-7560

CALL TO DUTY

At the beginning of this month, Ryan Leach, a PLANO member, notified us that he was being deployed to Iraq with his U.S. Marine Corps Reserve Unit. Many of our members know Ryan, and we thought you would want to be aware of this. Our thoughts and prayers are with Ryan for his safe return to the U.S. after his tour of duty.


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THOUGHT FOR THE DAY

Remember, no one makes it alone.
Have a grateful heart and be quick to
acknowledge those who help you.

*Submitted by the
PLANO Newsletter Editor*



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PLANO 2004-2005 COMMITTEE CHAIRMEN

Effective September 28, 2004, following the appointment of **Lawrence P. ("Larry") Beron** as **PLANO President**, and **Andrew M. Adams**, **Vice President**, Gieger, LaBorde & Laperouse, L.L.C., the following Committee Chairmen were appointed:

Membership Committee/Certification/CPL

Richard F. Price, Jr., ChairmanPrice Energy LLC

Social Committee

John T. Dale, Jr.McMoRan Oil & Gas LLC

Full details of all other Committee appointments will be contained in the November, 2004, Newsletter.

PLANO NEW MEMBERS

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



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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

Court Holds Levee Board
Attack on State Patent
Issued in 1911 Barred by
Prescription.

The State of Louisiana transferred a certain island (*the "Island"*) to the Lake Borgne Levee District (*the "Patentee"*). Ultimately, a patent (*the "Patent"*) was issued by the State to the Patentee in 1911, and the Patentee then sold the Island to a third party. Subsequently, mineral production was established on the Island. The Orleans Parish Levee Board (*the "Levee Board"*) asserted that it actually owned the Island and argued that the Island was within the boundaries of certain grants in 1898 and 1892 by the State to the Levee Board. Suit was filed in 2001 against the successors in interest to the above third party purchaser, and his mineral lessee (*the "Defendants"*). The trial court held that such claims by the Levee Board had prescribed and dismissed the action. The Court of Appeal for the Fourth Circuit affirmed. *Board of Commissioners v. Estate of Smith*, No. 2003-CA-1949, and 2003-CA-1950, 2004 WL 1948318 (La. App. 4th Cir. La. decided September 2, 2004).

The facts as recited in the opinion note that the Levee Board had been asserting ownership of the Island since 1920 but did not file suit until 2001. The Defendants argued that the suit should be dismissed since the claim had prescribed. The basis for this defense was Act 62 of 1912 which provides that suits contesting the validity of State patents must be filed within six (6) years of the issuance of the patent. The Levee Board argued that this statute did not apply because the transfer involved was absolutely null.

The basis for the Levee Board's argument was the Louisiana Supreme Court's decision in *Gulf Oil Corp. v. State Mineral Board*, 317 So.2nd 576 (La. 1974). In that case, the Court held that an action contesting the validity of a patent of

state waterbottoms was not barred by the passage of more than six (6) years from the issuance of same. It held that where the

patent attempted to convey lands that were inalienable (state waterbottoms cannot be conveyed to private individuals), the purported conveyance was an absolute nullity. Instead, it held that this statute only applied to cure formal defects in patents or transfers that were otherwise valid.

In the instant case the Levee Board argued that the Island had been granted to their predecessor in title, the Grand Prairie Levee District, and that the Patent was therefore a transfer of property belonging to another (i.e., absolutely null). The facts recited in the opinion seem to indicate that there was a real issue prior to the issuance of the Patent as to whether the Island was located within the geographical boundaries of the Levee District or the Patentee. In any event, the Court felt that the essence of the Gulf Oil decision was that the State could not patent lands it was legally prohibited from selling. In our case, the State could convey the Island and it did do so -- to the

Patentee. The Court felt that the issue of exactly where the Island was located vis a vis the Levee District and the Patentee was something that should have been resolved by the courts, but that the failure of the Levee District to file suit within the prescribed six (6) years bars it from doing so now.

This case is not yet final. Should this decision change upon further appeal, we will report on same.

State Revises and Re-
enacts Law Dealing with
Imprescriptible Mineral
Servitudes in Act 919 of
2004 Louisiana Legis-
lature.

Articles 149 through 153 of the Louisiana Mineral Code had provided rules regarding the effect of reserving the minerals in transactions with the state or other public or quasi public entities. Act 919 of

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



the 2004 Louisiana Legislature has repealed these articles and replaced them with new Article 147. **This Act is effective as of August 1, 2004. Since this statute completely replaces the prior articles, we are reprinting it in full below.**

Section 4 of the Act recites that the "Louisiana Mineral Law Institute is hereby directed to prepare revision comments to the provisions of this Act." They are being prepared and when they have been finalized, we will advise you of same.

As noted above, this Act is already effective.

Accordingly, if you are dealing with or intending to deal with such issues, you should review this Act.

Act 919 of 2004 Louisiana Legislature:

§149. Mineral rights reserved from acquisitions of land by governments or agencies thereof imprescriptible.

A. "Acquiring authority" for the purposes of this Section means (1) the United States, the state of Louisiana, and a subdivision, department or agency of either the United States or the state of Louisiana; (2) any legal entity with authority to expropriate or condemn, except an electrical public utility acquiring land without expropriation. An electric public utility acquiring land through expropriation shall be considered as an acquiring authority; and (3) a nonprofit entity, recognized under 501(c)(3) and 170 of the Internal Revenue Code as being organized and operated as a public charitable organization, that is certified by the Secretary of the Department of Natural Resources to be a state or national land conservation organization. The certification shall be in writing and shall be a public record. Such certification shall not for that reason alone be construed to authorize the nonprofit entity to exercise expropriation powers. With respect to certifications occurring on and after August 1, 2004, an entity's certification shall require approval by official action of both the Senate Committee on Natural Resources and the House Committee on Natural Resources.

B. When land is acquired from any person by an acquiring authority through act of sale, exchange, donation, or other contract, or by condemnation or expropriation, and a mineral right subject to the prescription of nonuse is reserved in the instrument or judgment by which the land is acquired, prescription of the mineral right is interrupted as long as title to the land remains with the acquiring authority, or any successor that is also an acquiring authority. The instrument or judgment shall reflect the intent to reserve or exclude the mineral rights from the acquisition and their imprescriptibility as authorized under the provisions of this Section and shall be recorded in the conveyance records of the parish in which the land is located.

C. If part of the land subject to the mineral right as set forth in Subsection B is divested by the acquiring authority to another who is not an acquiring authority, the mineral right is not divided. However, prescription

of the mineral right as to the land divested shall commence and accrue unless it is interrupted by use of the mineral right.

D. If a mineral right subject to prescription has already been established over land at the time it is acquired by an acquiring authority, the mineral right shall continue to be subject to the prescription of non-use to the same extent as if the acquiring authority had not acquired the land. Upon the prescription or other extinction of such mineral right, the transferor of the land shall without further action or agreement become vested with a mineral right identical to that extinguished, if (1) the instrument or judgment by which the land was acquired expressly reserves or purports to reserve the mineral right to the transferor, whether or not the transferor then actually owns the mineral right that is reserved, and (2) the land is still owned by an acquiring authority at the time of extinguishment.

E. Rights or interests in land originally acquired by an acquiring authority through expropriation and subject to a mineral reservation shall not be transferred by the same or subsequent acquiring authority to another who is not an acquiring authority, unless prior to the transfer:

(1) The acquiring authority first offers to sell or transfer the same right or interest back to the person or entity, or their heirs or successors, from whom such right or interest was originally acquired, if such person or entity still retains the mineral rights reserved.

(2) The offer shall be in writing and shall be based upon the fair market value of the right or interest.

(3) The offer shall be delivered by certified mail, return receipt requested, to the last known address of the grantor. The grantor shall have thirty calendar days from the date of receipt to accept or reject the offer in writing. Failure to respond timely shall create a presumption of rejection of the offer.

(4) If the last known address of the grantor cannot be determined, or if there has been no written response from the grantor to the acquiring authority accepting or rejecting the offer after thirty calendar days from date of receipt, the acquiring authority may institute a civil action by summary proceeding to show cause why the offer should not be considered rejected. A grantor whose last known address cannot be determined shall be treated as an absentee defendant.

The provisions of Subsection E shall not apply to any property acquired or disposed of by the Department of Transportation and Development pursuant to Part XII or Part XVIII of Chapter 1 of Title 48 of the Louisiana Revised Statutes of 1950.

F. The provisions of this Chapter shall not apply to:

(1) A transfer to an acquiring authority arising from the non-payment of ad valorem taxes, or by

enforcement of privileges, mortgages, judgments or other obligations for money.

(2) A transfer in which the acquiring authority neither expressly reserves or excludes nor conveys to the transferor a mineral right otherwise subject to prescription.

(3) A transfer to an acquiring authority of land with an existing mineral right subject to prescription in which the instrument or judgment transferring the land does not expressly purport to reserve the mineral right to the transferor or otherwise exclude the mineral right from the acquisition.

(4) Any lands or mineral rights that are subject of agreements made pursuant to R.S.41:1702.

G. Notwithstanding any provision of law to the contrary, when land within the Atchafalaya Basin Floodway is acquired from any person by an acquiring authority by conventional deed, donation, or other contract or by condemnation or expropriation proceedings and by the act of acquisition, order, or judgment, a mineral right otherwise subject to the prescription of nonuse is reserved, the prescription of nonuse shall thereafter not run against the right whether the title to the land remains in the acquiring authority, or is subsequently transferred to a third person, public or private.

H. For purposes of this Section, "Atchafalaya

Basin Floodway" means that area bounded by U.S. Highway 190 on the north, U.S. Highway 90 on the south, the East Atchafalaya Basin Protection levee on the east, and the West Atchafalaya Basin Protection levee on the west.

Section 2. R.S. 31:149.1, 149.2, 149.3, 150, 151, and 152 are hereby repealed in their entirety.

Section 3. The provisions of this Act shall become effective on August 1, 2004.

Section 4. The Louisiana Mineral Law Institute is hereby directed to prepare revision comments to the provisions of this Act.

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

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PERRET DOISE

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PLANO LUNCHEON

PLANO was formed in 1953-1954. To mark the 50th Anniversary of this extremely vibrant organization, the luncheon meeting held on Monday, September 13th, 2004, at Muriel's Jackson Square was a very special event for it celebrated the founding of PLANO. At the same time, in addition to having our own Harold J. Anderson (current AAPL's President) there to address the group, it gave the current PLANO Board an opportunity to introduce to those present at the luncheon several of PLANO's Past Presidents and Officers.

Past Presidents who participated were:

- M.A. ("Mitch") Ackal, PLANO President 2001-2002
- Harold J. Anderson, PLANO President 1999-2000
- Frank D. Barber, III, PLANO President 2003-2004
- Wayne Blankenship, Jr., PLANO President 1968-1969
- Wm. David Briggs, PLANO President 2002-2003
- Pete Broussard, PLANO President 1992-1993
- David L. Carnes, PLANO President 1985-1986
- Paul E. Dubroc, PLANO President 1993-1994
- Leon Hirsch, PLANO President 1981-1982
- Elwood D. ("Woody") Keller, PLANO President 1983-1984
- Robert J. ("Bob") Martin, PLANO President 1973-1974;
1987-1988; 1996-1997
- John J. Prat, PLANO President 1980-1981
- John J. Seip, III, PLANO President 1995-1996
- L. Keith Vincent, PLANO President 1998-1999
- Harald T. Werner, PLANO President 1990-1991



Front Row, L. to R.: David Briggs, Mitch Ackal, Pete Broussard, David Carnes, Woody Keller, Harold Anderson.

Back Row, L. to R.: John Prat, Harald Werner, Bob Martin, Paul Dubroc, Keith Vincent, Leon Hirsch, Wayne Blankenship, Frank Barber, John Seip

PLANO retirees and/or PLANO Board Members spotted in the group were: Dennis Mullins, Retiree; Jack Newton, PLANO Treasurer 1976-1977, and

Vice President 1977-1978; Clinton St. Clair, PLANO Vice President 1967-1968, and Richard B. Stephens, PLANO Secretary 1968-1969, and Vice President, 1969-1970.

Larry Beron, PLANO Vice President, then introduced the Speaker, Harold J. Anderson, who stepped to the podium and delivered an excellent update on AAPL, its activities and goals for the year ahead.



Harold J. Anderson, Speaker, AAPL President 2004-2005



Guests at the Luncheon

*In the forefront, several of PLANO's Past Presidents
Anyone spot Leon Hirsch in this photograph . . . ?*

All in all, it was a most memorable event. The staff at Muriel's went out of their way to ensure everyone enjoyed the gathering, even though we in New Orleans had the added threat of Hurricane Ivan knocking on our doors shortly thereafter. Many of the group returned to their offices and homes to start boarding up and taking steps to safeguard their interests in the following two to three days. Who knew what lay ahead at that time, including the requested evacuation of our fair city! We were saved by the grace of the Almighty.

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