



PLANO

SEPTEMBER/OCTOBER, 2008

www.planoweb.org

PLANO BULLETIN #050

PLANO EVENTS

- Oct. 13 **PLANO Luncheon**
Location : Andrea's, Metairie, LA
- Oct. 27 **PLANO Fall Golf Tournament**
Beau Chene, Mandeville, LA
- Dec. 9 **PLANO Christmas Luncheon**
(Tues) Galatoire's Restaurant
- Dec. 11 **PLANO Christmas Social**
(Thurs.) The Napoleon House
- Feb. 19 **PLANO's Executive Night**
(Thurs.) N.O. Hilton Riverside and Towers
- Feb. 19 **PLANO's Sponsor Party**
(Thurs.) Royal Sonesta Hotel

OTHER ACTIVITIES

- Oct. 21-22 **2008 Gulf Coast Prospect Expo**
Cajundome Convention Center,
Lafayette, LA
- Nov. 11 **Joint Industry Luncheon**
(Tues.) Location : Royal Sonesta Hotel,
New Orleans
- Nov. 27 **THANKSGIVING DAY – HOLIDAY**
- Dec. 6-7 **AAPL Quarterly Meeting**
- Dec. 25 **CHRISTMAS DAY - HOLIDAY**
(Thurs.)
- Dec. 26 **CHRISTMAS HOLIDAY**
(Fri.)

PLANO LUNCHEON

MONDAY, OCTOBER 13, 2008 ~ 11:30 A.M.

Andrea's Restaurant, Metairie, LA.

Speaker: J. KEITH COUVILLION, Deepwater Land Manager

Exploration and Projects Business Unit - Gulf of Mexico, Chevron U.S.A. Inc., Houston, TX

J. Keith Couvillion is the Deepwater Land Manager supporting Chevron's Deepwater Gulf of Mexico Exploration and Projects Business Unit located in Houston, Texas. Mr. Couvillion originally joined Texaco in early 1980 and has worked either onshore or offshore for the past 28 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) as an in-house Land Consultant. In 2004, Mr. Couvillion returned to Houston and is currently Chevron's Deepwater Land Manager in Chevron's Deepwater Exploration and Projects Business Unit.

Mr. Couvillion has been and is currently active in many industry trade and professional associations

supporting Gulf of Mexico OCS activities. He currently serves as co-Chairman of the API led Marine Wildlife Issues Group. Mr. Couvillion has also served as a Vice President of AAPL, the Chairman of the OCS Advisory Board (formerly the AAPL OCS Committee), the Chairman of the API OCS Issues Group and held leadership and membership positions in many other ad hoc industry committees. Mr. Couvillion is a frequent presenter in industry and academic forums around the country addressing offshore issues around the country. He also has published numerous articles on topics of interest to the offshore industry.

Mr. Couvillion graduated from Lamar University in 1978 and 1979 where he obtained both a Bachelors and Masters Degrees in Business. He enjoys volunteering with the Boy Scouts of America, young sports and other community activities. Mr. Couvillion also enjoys outdoor activities especially hiking and camping. He has been married for over 28 years and has two adult children.



**MESSAGE FROM THE PLANO PRESIDENT
2008-2009**



Even with the hurricanes that we have been dodging, we are off to a terrific start with PLANO events this year. The Summer Garden De'Lights Gala held mid August at the Botanical Garden at City Park was a great success. Dr. John provided the music and a good time was had by all. The pre-MMS Fall Lease Sale breakfast on August 20 at the Royal Sonesta was also widely attended. Jeff Crouere, the radio/television political commentator, was our speaker at the September Luncheon.

Our next Luncheon meeting will be on Monday, October 13 at Andrea's. Keith Couvillion with Chevron will be our speaker. The PLANO Fall Golf Tournament will be held on Monday October 27 at Beau Chene. Our November 18 Luncheon will be a joint effort with the other local oil & gas associations at the Royal Sonesta. In December we will have our usual Christmas Luncheon at Galatoire's, as well as the Christmas Social at The Napoleon House.

We are working on an educational seminar for later this year to complement the seminar scheduled for February 19, 2009.

On the national level, there is a lot of concern at AAPL that certain states are going to proceed with licensing requirements for landmen. The licensing issue is heating up in several states due to the apparent lack of professionalism and questionable ethics exhibited by some landmen working in the various onshore resource plays. AAPL is considering being proactive regarding licensing and is drafting a bill that could be introduced in the Texas legislature that will tie licensing to CPL/RPL accreditation. At the most recent AAPL Directors' meeting, a decision was made to provide the AAPL membership with information relative to this important matter so that comments could be made. We will be hearing more about this from PLANO's AAPL Director, Doug St. Clair.

I look forward to seeing you at the upcoming functions.

David A. Seay
PLANO President

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Education

Committee Chairperson To Be Announced

Ethics

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Executive Night & Luncheon Speakers

William L. Johnson, Jr., Robert A. Schroeder

Golf

Edward ("Ed") Dewailly, Jan H. Aschaffenburg

History of PLANO

Benjamin J. Waring, Charles Miller

Information Technology/Web Site

Margo Cameron, Brandt J. Prat

Membership & Membership Dues

Margo Cameron

Newsletter

Gregory M. Riedl, John T. Dale, Jr., David V. Dufour

Nominating Committee/ Awards

Committee Chairperson To Be Announced

Parliamentarian/By-Laws

Committee Chairperson To Be Announced

Scholarships

Committee Chairperson To Be Announced

Socials

Gregory M. Riedl

Speakers - Executive Night & Lunches

Harold J. Anderson, Margo Cameron

Sponsorship Program

Anne D. Bailey/Frank D. Barber, III

Summer Garden Reception

Robert J. Martin

Tax Returns

Margo Cameron

PLANO Administrator

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

A father is a banker provided by nature!

Submitted by
Margo Cameron, PLANO Administrator &
PLANO Newsletter Editor

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 business 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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Louisiana Supreme Court Holds Act 312 Constitutional

Submitted by:

Aimee Williams Hebert,
Gordon, Arata, McCollam, Duplantis & Eagan LLP*

On July 1, 2008, the Louisiana Supreme Court rendered the much awaited opinion in *M.J. Farms v. Exxon Mobil Corporation*, __ So.2d ___, 2007-2371 (La. 7/1/08), rehearing granted in part (La. 9/19/08), holding that Act 312 of 2006 ("Act 312") is constitutional under both the Louisiana and United States Constitutions.

Background

The lawsuit was instituted on April 27, 2006 by plaintiff, M.J. Farms Ltd., but no trial date was ever set. In its original petition, the plaintiff alleged that it is the owner of land in Catahoula and Avoyelles Parishes, consisting of approximately 42,000 acres, and it also contended that the various defendants' oil and gas operations caused environmental damage to its property.

On June 8, 2006, while the suit was pending, the Governor of Louisiana signed Senate Bill 655, enacting Act 312, which sets forth procedural requirements for pursuing claims for environmental damages caused by oil and gas operations. Section 3 of Act 312 indicated that the Act applies to pending litigation unless a trial date had been set by an order issued prior to March 27, 2006. Because no trial date had been set in M.J. Farm's case by March 27, 2006, the defendants contended that Act 312 applies.

Under Act 312, a party making a judicial demand alleging environmental damages must provide timely notice of the demand to the State of Louisiana through the Attorney General and the Office of Conservation within the Louisiana Department of Natural Resources ("LDNR"). The litigation is then stayed until thirty days after notice is issued and return receipt is filed with the district court in order to allow the State an opportunity to decide whether or

not it will intervene in the case.

The plaintiff did not provide the Attorney General or the LDNR with the required notice, and several defendants filed motions in district court to enforce the stay provision of Act 312. The plaintiff opposed these motions on the grounds, *inter alia*, that Act 312 did not apply to cases arising under the Louisiana Mineral Code (the "Mineral Code"), that it should not apply to pending cases because there was no express statement in Act 312 providing for its retroactive application, and that if the Act did apply retroactively it would violate the Louisiana and United States Constitutions.

The case has a protracted and complex procedural history, including an intervention by the State of Louisiana, two rulings by the district court on the issue of Act 312's constitutionality, a prior appeal of the initial ruling to the Louisiana Supreme Court, removal of the case to federal court and a remand to the district court. Ultimately, on October 8, 2007, the district court issued a second judgment declaring Act 312 unconstitutional. The Supreme Court's opinion was rendered as a result of the appeal of this judgment.

ABOUT THE AUTHOR

Aimee Williams Hebert, is a partner in the New Orleans office of Gordon, Arata, McCollam, Duplantis & Eagan LLP in the firm's oil and gas section. Following graduation from law school in 1998, she engaged in private practice in Lafayette, Louisiana, clerked for the Honorable W. Eugene Davis, United States Fifth Circuit Court of Appeals, and then joined Gordon, Arrata, McCollam, Duplantis & Eagan in 2003. Aimee's private practice has involved trial and appellate litigation in state and federal courts in disputes relating to mineral drainage, overriding royalties, servitudes, operating agreements, mineral leases, environmental issues, the Outer Continental Shelf Lands Act (OCSLA), and various other oil and gas related issues. She serves as a Board Member of PLANO, the Louisiana Oil and Gas Association (LOGA) and the New Orleans chapter of the Energy Bar Association.



Non-Constitutional Grounds Asserted

Noting its long standing adherence to the principle that it should avoid constitutional questions when possible, the Supreme Court first addressed the non-constitutional grounds for upholding the district court's decision as advanced by the plaintiff. First, plaintiff argued that Act 312 did not apply to its claims because the Act did not amend Title 30 of the Louisiana Revised Statutes in which the Mineral Code is located. Next, plaintiff argued that Act 312 cannot be applied to cases filed prior to its effective date because the Louisiana

Legislature did not include express language that it was to be applied retroactively.

In addressing plaintiff's first argument, the Court examined the statutory language and found that the statute made clear that it applies to "any litigation or pleading making a judicial demand arising from or alleging environmental damage." The Court found that the language of Act 312 did not distinguish between actions brought by public entities and those brought by private landowners under the Mineral Code. The only limitation in the statute is that the litigation involve "contamination resulting from activities associated with oilfield sites or exploration and production sites" and not others. And, the fact that a private party may have a private cause of action under the Mineral Code does not remove the case from the purview of Act 312. Rather than conflicting with the Mineral Code, the Court concluded that the procedure under Act 312 supplements the Mineral Code.

The Court next addressed the argument that the legislature did not expressly provide for Act 312's retroactive application. The Act states that it "shall not apply to cases in which the court on or before March 27, 2006, has issued an order setting the case for trial." The Supreme Court found that this language evidenced a legislative intent that Act 312 should apply retrospectively and prospectively to any case except the limited cases in which an order had been issued prior to March 27, 2006.

Constitutional Questions Raised

Having rejected the non-constitutional grounds for upholding the district court's judgment, the Court then entertained the constitutional issues raised by retroactive application of Act 312. The plaintiff urged three constitutional arguments: (1) whether Act 312 divested the plaintiff of vested rights protected by the substantive due process guarantees of the Louisiana and United States Constitutions; (2) whether Act 312 denied the plaintiff access to the courts; and (3) whether Act 312 divested the district court of its original jurisdiction.

In support of its due process argument, plaintiff argued that, because it could no longer recover damages for contamination on its land, it had been denied its right to due process. The Court noted, however, that Section H of Act 312 expressly provides that it "**shall not** preclude an owner from pursuing a judicial remedy or receiving a judicial award for **private** claims suffered as a result of environmental damages except as otherwise provided in this Section." (Emphasis in opinion). The court also noted that private rights are subject to reasonable statutory restrictions and reasonable exercise of the police power. The court found that "[t]he provisions of Act 312 represented such rea-

sonable restrictions."

Moreover, the plaintiff sought the remedies of containment, clean-up, remediation, and restoration of its land. And, the Supreme Court found that Act 312's application to these claims actually implements and facilitates the accomplishment of the plaintiff's prayer for remediation and restoration. The Court concluded that Act 312 attaches a procedure for judicial resolution of environmental damage to ensure that damage to the environment is remediated to a standard that protects the public interest.

The court recognized that the Act is comprised of six basic components. First, Act 312 requires timely notice to the State of such litigation. Second, Act 312 stays such litigation until thirty (30) days after such notice to the State is given. Third, Act 312 allows the State to intervene in such litigation. Fourth, the Act provides a role for the LDNR in determining the most feasible plan for evaluation and/or remediation of environmental damage. Fifth, Act 312 provides for the payment for evaluation and remediation of environmental damages and provides that the district court will oversee actual implementation of the plan determined to be "most feasible." Finally, Act 312 allows the landowner and the State to recover attorney and expert fees and costs from the responsible party or parties.

In light of its analysis, the Court concluded that Act 312 did not divest the plaintiff of vested rights and, therefore, did not violate the due process guarantees of the Louisiana and United States Con-



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stitutions.

The Court next briefly addressed the plaintiff's argument that Act 312 divested the district court of its original jurisdiction. The Court recognized that under the Act suit is instituted in the district court and is not deferred to the LDNR until the district court determines environmental damages and identifies the responsible party. The Court also noted that the district court is not required to adopt the plan approved by the LDNR. Rather, the district court retains jurisdiction to compare the various plans for restoration and to determine which plan is most feasible. Thus, the district court is not divested of its original jurisdiction.

The plaintiff's final constitutional argument was based on Article I, § 22 of the Louisiana Constitution guaranteeing access to courts to address grievances. In addressing this argument, the Supreme Court noted that the historical background of Article I, § 22 indicated that there was no intent to limit the Louisiana Legislature's ability to restrict causes of action. Rather, the clause "operates only to provide remedies which are fashioned by the legislature." Although Act 312 changes the remedies available to the plaintiff in its efforts to obtain surface restoration of its property, the Court found that this did not deny access to the courts. The Court concluded that the district court remains an active participant in the entire restoration process. Thus, it found no merit to the plaintiff's argument that Act 312 restricted the plaintiff's access to the courts.

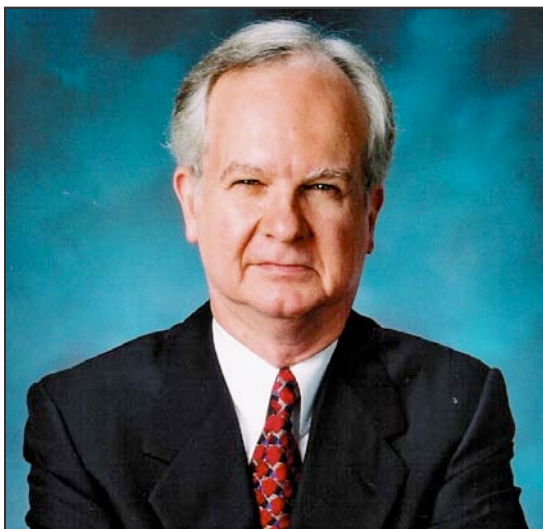
Unanswered Question

Left unanswered is the question of how the procedure set forth in Act 312 will be implemented. Because the extent of restoration and remediation is

an issue that is first reviewed by LDNR under Act 312, it can be argued that testimony regarding the extent of damages to a landowners' property is improper during the initial phase of an environmental contamination case. It may be further argued that the district court should order a bifurcated process in which the court first examines liability, and after responsibility has been determined, the matter should be referred to the LDNR to examine the proposed plans for remediation. The reported decisions in which courts that have addressed this argument have rejected it. *Tensas Poppadoc, Inc. v. Chevron*, 984 So.2d 223 (La. App. 3 Cir. 5/21/08); *Germany v. ConocoPhillips Company*, 980 So.2d 101 (La. App. 3 Cir. 3/5/08); *Brownell Land Co., L.L.C. v. OXY USA Inc.*, 538 F.Supp.2d 954 (La. ED 2007); *Duplantier Family P'ship v. BP Amoco*, 955 So.2d 763 (La.App. 4 Cir.2007)(unreported). However, the Louisiana Supreme Court has refrained from passing on this issue. In *M.J.Farms*, the Court specifically recognized the existence of the issue but made no comment as to its ultimate resolution, stating that its prior denial of writs in the *Duplantier* case has no precedential value. *M.J.Farms*, 2007-2371, at 4, n. 12. Thus, the argument remains viable until ultimately decided by the Louisiana Supreme Court.

*In the interest of full disclosure, it is noted that Aimee Hebert, along with Matthew J. Randazzo III, Loulan Pitre, and Michelle Purchner, of the law firm Gordon, Arata, McCollam, Duplantis & Eagan LLP, represent numerous defendants in the M.J. Farms case. The discussion contained herein is therefore limited to information that is a matter of public record. To obtain copies of the opinions, briefs, or other related materials please contact Aimee Hebert at ahe-

ATTORNEY ANNOUNCEMENT



Houston, Texas — Gordon Arata McCollam Duplantis & Eagan LLP, with offices in Houston, Texas, and New Orleans, Baton Rouge, and Lafayette, Louisiana, elected J. Lanier Yeates as a member of the Management Committee on July 26, 2008 and is now the Managing Partner of the Houston Office. Mr. Yeates is a lawyer licensed to practice in Texas and Louisiana. His practice principally involves energy matters.

NEW MEMBERS

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GARY W. THOMAS

Independent Landman
P.O. Box 4202
Monroe, LA 71211-4202

PLANO is pleased to announce these new members to the general membership, and welcomes all of them to the organization.

REMINDER

The Gulf Coast Prospect Expo ("GCPE") is to be held at the Cajundome Convention Center, Lafayette, LA, October 21-22, 2008. Online registration is available at www.gcpeonline.com

AAPL MEMBERSHIP

Effective immediately, anyone wishing to become an AAPL member is required to turn in the request to the President of his/her local association for the signature of the existing President prior to the application being turned into AAPL.

REMINDER

PLANO FALL GOLF TOURNAMENT
MONDAY, OCTOBER 27, 2008 - 9:00 A.M.
BEAU CHENE COUNTRY CLUB
MANDEVILLE, LOUISIANA

9:00 a.m. Shotgun Start
Entry Fee - \$125.00 PLANO Members,
\$150.00 PLANO Non-Members
(Include an additional \$20.00 with your entry fee and purchase a Team Mulligan).

Four Golfer Scramble Format.
Please make your own foursomes, if possible, and mail reservation forms to Rob Schroeder, P.O. Box 681, Mandeville, LA 70470, or e-mail to ras2000@bellsouth.net.
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PLANO GOLF TOURNAMENT

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_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Enclosed is my entry fee check, made payable to PLANO, for \$_____.

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11th Annual Greater New Orleans Joint Energy Industry Association Luncheon

Tuesday, November 18, 2008

**Mark Singletary, Editor and Publisher, N.O. Publishing Group
“New Orleans Recovery vs Normalcy and its Challenges”**



George Wentz, Horizon Initiative “Update on Horizon Initiative”



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New Orleans Geological Society
Offshore Oil Scouts Association
Professional Landmen’s Association of New Orleans
Society of Independent Professional Earth Scientists
Society of Petroleum Engineers – Delta Section
Society of Petrophysicists and Well Log Analysts
Society of Women Engineers
Southeastern Geophysical Society

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Grand Ballroom, 1st Floor
11:00 a.m. - 1:00 p.m.

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