



PLANO

Professional Landmen's Association of New Orleans

FEBRUARY, 2004

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PLANO BULLETIN #025

PLANO EVENTS

- Feb. 11 PLANO Night at the Cabaret - Le Chat Noir
- Feb. 19 PLANO Seminar (1/2 day) – N.O. Hilton Riverside
- Feb. 19 PLANO Executive Night – N.O. Hilton Riverside
- Feb. 19 PLANO Sponsor Party – Royal Sonesta Hotel
- Mar. 4 PLANO Luncheon - Royal Sonesta Hotel
- Apr. 5 PLANO Luncheon - Royal Sonesta Hotel
- May 10 PLANO Luncheon - Muriel's Jackson Square

OTHER ACTIVITIES

- Feb. 4 NAPE, Houston, TX International Forum
- Feb. 4 NAPE, Houston, TX - Icebreaker
- Feb. 5-6 NAPE, Houston, TX
- Feb. 18 Joint Industry Luncheon, Fairmont Hotel New Orleans
- Feb. 24 **MARDI GRAS, New Orleans, LA - HOLIDAY**
- Apr. 1-2 51st LSU Mineral Law Institute, Baton Rouge, LA
- Apr. 6-7 Gulf Coast Energy Marketplace Fairmont Hotel, New Orleans
- Apr. 14-16 AAPL CPL Review, Royal Sonesta Hotel, New Orleans
- Apr. 17 AAPL CPL Review Exam, Royal Sonesta Hotel, New Orleans, LA

PLANO'S EXECUTIVE NIGHT

NEW ORLEANS HILTON RIVERSIDE

#2 POYDRAS STREET, NEW ORLEANS, LA

THURSDAY, FEBRUARY 19, 2004, 5:30 P.M. - 9:00 P.M.

THE HONORABLE KATHLEEN BABINEAUX BLANCO, GUEST SPEAKER

Governor, State of Louisiana

Kathleen Babineaux Blanco is the first woman to be elected governor of Louisiana. In her long career of public service, she has distinguished herself and her state in a variety of positions of ever-increasing responsibility.

Kathleen Blanco has served in state offices since 1984, when she became the first woman ever elected to represent the people of Lafayette in the state legislature. She served two terms before being the first woman elected to the Louisiana Public Service Commission. While on the PSC, she served as chairperson in 1993 and 1994. In 1996, she was elected to the Office of the Lieutenant Governor where, along with many other economic activities, she was to position Louisiana along with Paris, Rome and London as a top travel destination.

Most recently, Governor Blanco served two terms as Lieutenant Governor of Louisiana. She was re-elected by an overwhelming eighty percent of the state's electorate. As the state's second-highest official, she directly supervised the

Department of Culture, Recreation and Tourism, which encompasses the Offices of State Parks, State Museums, State Libraries, Cultural Development and Tourism. She also administered the Louisiana Serve Commission and the Louisiana Retirement Development Commission. Louisiana Serve oversees 64 national service projects across Louisiana and involves more than 13,000 service volunteers. The retirement development commission is dedicated to marketing Louisiana as a premier retirement state.

Governor Kathleen Babineaux Blanco and her husband Raymond have been married since 1964. They are the parents of six children and the proud grandparents of five.



MESSAGE FROM THE PLANO PRESIDENT 2003-2004



We're off to a good start for the 2004 PLANO Year.

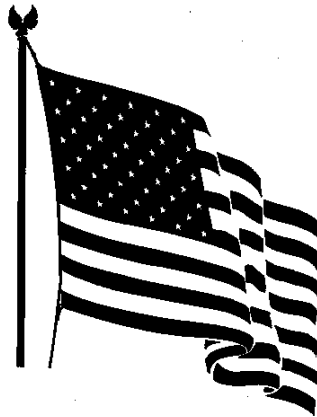
We enjoyed the presentation made by David Miller of Encap at our January luncheon at Muriel's. We are not having a regularly scheduled February luncheon but are pleased to announce that Harold Anderson will receive the Joint Industry Association's Meritorious Service Award on February 18th at the Fairmont Hotel's Blue Room. We encourage our PLANO members to attend to honor Harold in receiving this most deserved recognition for his contributions to the industry and community.

Also scheduled is our first PLANO Night Out on The Avenue featuring political satire with Chris Rose et al. We hope to see you there on February 11th.

Finally, we are pleased to again host Executive Night February 19th and expect a fine turnout for our preeminent event. Remember, all sponsors enjoy admittance to our post Executive Night Mardi Gras Balcony at the Royal Sonesta on Bourbon. It's not too late to become a sponsor and enjoy all of the perks.



Frank D. Barber, III, PLANO President



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PLANO’s 2004 Sponsorship Program is still under way. Sponsorship levels are:

Platinum	\$2,000.00
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Anyone wishing to become a sponsor is asked to contact

Harold J. Anderson (504-276-5858)
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There are many advantages to becoming a PLANO Sponsor, and we urge you to become a Sponsor. Your support is sought.

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VOLUNTEER NEEDED

Photographer for photo taking at PLANO events on an as-needed basis. Call Margo Cameron, PLANO Administrator, 504-593-7560, or e-mail to margo_cameron@dom.com.

THOUGHT FOR THE DAY

*Submitted by the
PLANO Newsletter Editor
Protect your enthusiasm
from the negativity of others.*



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Membership applications from the individuals named in this section were reviewed and approved by the PLANO Board of Directors at the meeting on Thursday, January 8, 2004. The PLANO Board welcomes these new members to the organization.

PLANO NEWSLETTER

The PLANO Board of Directors plans to go online with the PLANO Newsletter in order to save publication and reproduction costs that can be passed on to benefit the membership. Dues Notices to be issued shortly will contain an insert asking members if they wish to receive the Newsletter by U.S. Mail, by e-mail, or by downloading the newsletter from the PLANO Website (www.planoweb.org). Members are asked to respond promptly to this request.

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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 Finds Lessee Produced Condensate In Paying Quantities and Rejects Demand to Cancel Lease.

A landowner (*the "Lessor"*) granted an oil, gas and mineral lease (*the "Lease"*) covering certain land in Louisiana and production was established from same. The royalty payments made by the mineral lessee (*the "Lessee"*) to the Lessor were somewhat haphazardly made, and it appeared (based upon reports filed with the State of Louisiana) to the Lessor that there had been no production for more than 90 consecutive days. The Lessor also believed that if there had been any production, it was not in paying quantities, and filed suit against the Lessee for cancellation of the Lease. The Trial Court held for the Lessee and the Lessor appealed. The Second Circuit affirmed. *O'Neal v. J LH Enterprises, Inc.*, 2003 WL 22962204 (La. App. 2d Cir. Dec. 1, 2003).

A mineral Lessor has recourse against his Lessee for failure to abide by the terms of the mineral lease. If royalty is not being paid or not being paid timely, La. R.S. 31:137 – 139, set out a procedure whereby the lessor is to send a certified letter to the Lessee making demand and the Lessee has 30 days from the receipt of the letter to pay or to state in writing a reasonable cause for nonpayment. Additionally, if there has been no production for the period of time called for in the lease (in our case, 90 days), or if there has been production, but it has not been in "paying quantities," then the Lessor may sue for lease cancellation.

The initial situation faced by the Lessor was the irregular payment of royalty. The decision points out that in March of 1999, the Lessor wrote to the Lessee complaining that the November 1998 royalty was not

received until March of 1999 despite "repeated telephone demands for payment." This letter

demanding lease cancellation, clean up, etc. This kind of situation continued throughout 1999 with the Lessee making payment in June of 1999, for the months of January through April, and in July of 1999, for the months of May and June. Finally, after the Lessee assigned the Lease to a third party (which shall continue to be referred to as the "Lessee") in 2001, the new Lessee made payment in May of 2001 for the period of May 1999 through August of 2000. The Lessor refused this royalty check; however, the Lessor never made written demand upon Lessee (the above letter actually pointed out the check had been received).

For whatever reason, the Lessee also failed to file production reports with the Office of Conservation ("*DOC*"), State of Louisiana, and the Lessor wrote a letter dated February 4, 2000, to DOC requesting that the well located on the Lease be sealed (shut in by DOC and a seal placed over

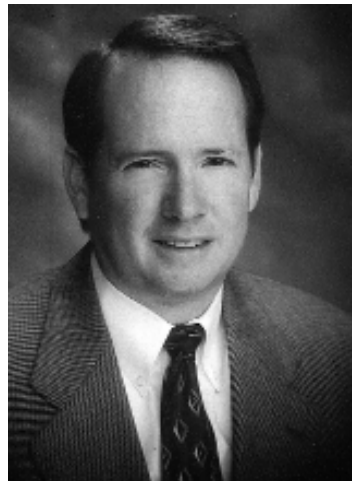
it), which demand was rejected by DOC. On March 16, 2000, the Lessor executed an affidavit that he filed in the conveyance records to the effect that the Lease had terminated due to lack of production – he attached the DOC reports showing lack of production reports. In May of 2000, the Lessor wrote to the purchaser of condensate and advised them the Lease had terminated and they had no right to be on the property. On that same date, the Lessor wrote to the gas gatherer and advised them of the same thing. On July 25, 2000, the Lessor wrote to the company that rented a gas compressor to the Lessee and advised them of the same thing.

The record reflects that the Lessee conducted certain reworking

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



operations during this time, and there had been production of condensate (*the record is not clear why this production would not have been reported to DOC*). Accordingly, the Court disposed of Lessor's claim of lease cancellation based upon this ground. The Lessor then argued that the production was insufficient to constitute "paying quantities." However, his analysis of the net revenue included the costs of the reworking operations, and limited the time period of comparison to 13 months. The Court pointed out that reworking operations are extraordinary expenses which are not considered in analyzing whether the production is in paying quantities, and cited the case of *Lege v. Lea Exploration Company*, 631 So.2d 716 (La. App. 3d Cir. 1994), as an example of the cases in this area. Additionally, the Court rejected use of a 13 month time period and pointed to the 18 month time period utilized in the case of *Edmundson Brothers Partnership v. Montex Drilling Company*, 731 So.2d 1049 (La. App. 3rd Cir. 1999). Analyzing this expanded period and eliminating the reworking expenses, it found that the production was in paying quantities. The Court also noted that the actions of the Lessor resulted in less revenue since it made it impossible for the Lessee to sell the natural gas production. The Court rejected this demand.

The last claim made by the Lessor was that he was entitled to double royalty for the failure to timely pay royalties. Again, the Court rejected this demand since no written demand had been made

by the Lessor.

While the holding of this case is consistent with Louisiana law in this area, the actions of the Lessor are what make it noteworthy. Lessor's assumption that there had been no production based upon his review of the DOC records, turned out to be erroneous. His actions in advising the above parties that the Lease had terminated without first getting a judicial determination did not help his case and resulted in less revenue since the Lessee had to flare the natural gas instead of selling it. Finally, the failure of the Lessor to send the demand letter for unpaid royalties barred him from recovering any damages.

The above case does not appear to be final as of yet. In the event the holding of this case is changed upon further appeal, we will advise in a future article.

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

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PLANO DUES 2004

PLANO Dues Notices will be issued to membership in the course of the next few weeks. For the first time ever, Dues Notices will be e-mailed to members. To assist us in this new undertaking, we encourage our membership to check their e-mail addresses by using the online directory at the PLANO Website (www.planoweb.org). Members who do not use e-mail will continue to receive their notices by U.S. Mail.

JOINT INDUSTRY LUNCHEON

At this luncheon to be held at the Fairmont Hotel, New Orleans, Wednesday, February 18, 2004, 11:30 a.m., our own Harold J. Anderson and Scott Sewell of Delta Energy will each receive the Joint Industry Association Meritorious Award. This is indeed an honor. A flyer will be released to membership early next week giving full information on the event. Please mark your calendars and plan to attend.

PLANO AND "DRESS FOR SUCCESS"

PLANO will team up with *Dress for Success* to help low-income women make tailored transitions into worthwhile jobs. PLANO and PLANO Auxiliary chose to organize a Ladies' Suit Drive. *Dress for Success New Orleans* has certain requirements for Ladies' Suits: Professional business suits (pants or skirts), blouses and shells, blazers and jackets, professional shoes, purses without decoration. All clothes should be clean and on hangers. All donations should be basic colors, black, navy, grey, brown or taupe. Participants are referred to *Dress for Success* from over 72 local government agencies, social organizations and faith based organizations. All donations may be taken to Taylor Energy Company, One Lee Circle, 944 St. Charles Avenue, New Orleans, LA 70130-3938, Attn: Frank D. Barber, III, PLANO President. Should you have any questions, please contact Jo Ann Anderson at 276-5858, Ext. 214, or E-mail to janderson@hjainc.com.

OCS UPDATE LEASING IN THE OUTER CONTINENTAL SHELF

*presented by J. Keith Couvillion
ChevronTexaco*

Occasionally I'm asked questions regarding the various laws and regulations that govern the leasing of federal lands located off the coast of the United States. If I don't readily know the answer off the top of my head, I turn to my computer and the wonders of the internet to find the answer. Prior to the development of the internet and numerous government websites, I would reach for bound copies of the laws and regulations kept in my office. These copies, however, would have to be replaced periodically to ensure the documents being referenced included all current amendments and revisions. What I thought I would do with this article is provide some general guidelines for accessing through the internet some key laws and regulations needed to answer those periodic lease sale questions and to briefly review the authority of the Secretary of the Interior in granting oil and gas leases in the Outer Continental Shelf.

The foundation for the entire offshore program is found in the Outer Continental Shelf Lands Act of 1953, as amended (OCSLA). The statute is located under Title 43 of the United States Code. Specifically, under Chapter 29 entitled "Submerged Lands", Subchapters I, II and III. Chapter 29 of Title 43 can be accessed through the internet at the following web address:

<http://www4.law.cornell.edu/uscode/43/ch29.html>

Under Subchapter III of Chapter 29, "The Secretary shall administer the provisions of this Subchapter (III) relating to the leasing of the Outer Continental Shelf, and shall prescribe such rules and regulations as may be necessary to carry out such provisions. The Secretary may at any time prescribe and amend such rules and regulations as he/she determines to be necessary and proper in order to provide for the prevention of waste and conservation of the natural resources of the Outer Continental Shelf, and the protection of correlative rights therein, and, notwithstanding any other provi-

sions herein (the OCSLA), such rules and regulations shall, as of their effective date, apply to all operations conducted under a lease issued or maintained under the provisions of this Subchapter. In the enforcement of safety, environmental, and conservation laws and regulations, the Secretary shall cooperate with the relevant departments and agencies of the Federal Government and of the affected States. In the formulation and promulgation of regulations, the Secretary shall request and give due consideration to the views of the Attorney General with respect to matters which may affect competition....."

In addition to the general guidelines given to the Secretary of the Interior to administer the offshore leasing program, the Secretary must also "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/she determines will best meet national energy needs for the five-year period following its approval or re-approval....."

Section 1337 under Subchapter III contains the text of the OCSLA that outlines the process the Secretary of the Interior is required to follow in an effort to offer federal offshore lands for lease. One of the most interesting components of Section 1337 deals with the various bidding systems the Secretary has at his/her discretion to offer offshore leases. Over the last decade or so the Secretary

has only used a couple of bidding systems available to his/her in the law. The Secretary experimented with other bidding systems a few years ago, but settled on the current bonus bid system used today. For those of you who may not be familiar with the bidding systems the Secretary has available, the following is an excerpt from Section 1337 of the OCSLA where the bidding systems are described:

"The Secretary is authorized to grant to the highest responsible qualified bidder

About the Author

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or bidders by competitive bidding, under regulations promulgated in advance, any oil and gas lease on submerged lands of the Outer Continental Shelf which are not covered by leases meeting the requirements of subsection (a) of Section 1335 of this title. Such regulations may provide for the deposit of cash bids in an interest-bearing account until the Secretary announces his/her decision on whether to accept the bids, with the interest earned thereon to be paid to the Treasury as to bids that are accepted and to the unsuccessful bidders as to bids that are rejected. The bidding shall be by sealed bid and, at the discretion of the Secretary, on the basis of:

(A) cash bonus bid with a royalty at not less than 12 1/2 per centum fixed by the Secretary in amount or value of the production saved, removed, or sold;

(B) variable royalty bid based on a per centum in amount or value of the production saved, removed, or sold, with either a fixed work commitment based on dollar amount for exploration or a fixed cash bonus as determined by the Secretary, or both;

(C) cash bonus bid, or work commitment bid based on a dollar amount for exploration with a fixed cash bonus, and a diminishing or sliding royalty based on such formulae as the Secretary shall determine as equitable to encourage continued production from the lease area as resources diminish, but not less than 12 1/2 per centum at the beginning of the lease period in amount or value of the production saved, removed, or sold;

(D) cash bonus bid with a fixed share of the net profits of no less than 30 per centum to be derived from the production of oil and gas from the lease area;

(E) fixed cash bonus with the net profit share reserved as the bid variable;

(F) cash bonus bid with a royalty at no less than 12 1/2 per centum fixed by the Secretary in amount or value of the production saved, removed, or sold and a fixed per centum share of net profits of no less than 30 per centum to be derived from the production of oil and gas from the lease area;

(G) work commitment bid based on a dollar amount for exploration with a fixed cash bonus and a fixed royalty in amount or value of the production saved, removed, or sold;

(H) cash bonus bid with royalty at no less than 12 and 1/2 per centum fixed by the Secretary in amount or value of production saved, removed, or sold, and with suspension of royalties for a period, volume, or value of production determined by the Secretary, which suspensions may vary based on the price of production from the lease; or

(I) subject to the requirements of paragraph (4) of this subsection, any modification of bidding systems authorized in subparagraphs (A) through (G), or any other systems of bid variables, terms, and conditions which the Secretary determines to be useful to accomplish the purposes and policies of this subchapter, except that no such bidding system or modification shall have more than one bid variable.”

Most laws, passed by Congress and signed by a sitting President, lack the detailed instructions necessary to implement the provisions stated in the laws. The OCSLA is no exception. The provisions of the OCSLA are defined with implementing regulations found under Title 30 of the Code of Federal Regulations. The actual regulations detailing the leasing procedure are located under Part 260 of Volume 2 of Chapter II of Title 30. The following web address is where the sections of Title 30 and their corresponding parts can be referenced:

http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_30/30cfrv2_00.html#201

These regulations are modified annually to reflect changes in technology, lessons learned, safety and environmental issues and any other procedure or guideline MMS believes needs updating.

In regard to actual lease sales, there is another component of instructions and protocol that those of us interested in acquiring an offshore lease must follow. These instructions and protocols are found in the final lease sale notice document. The instructions can vary from lease sale to lease sale and between MMS regions. Close attention must be paid to these lease sale documents to ensure a party's bids are submitted properly.

In summary, the OCSLA creates the framework for the Secretary of the Interior to offer offshore acreage, the regulations help to establish the general guidelines, and the final sale notice details the instructions we must all follow if we want to purchase federal offshore leases from the United States government. It is by no means a simple or quick process, but one that can be easily followed when you know where to look

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