



Upstream, Midstream & Downstream: What's on the 2017 horizon?

Kelly Perrier & Nicole Russell

Professional Landmen's Association of New Orleans
2017 Seminar and Executive Night



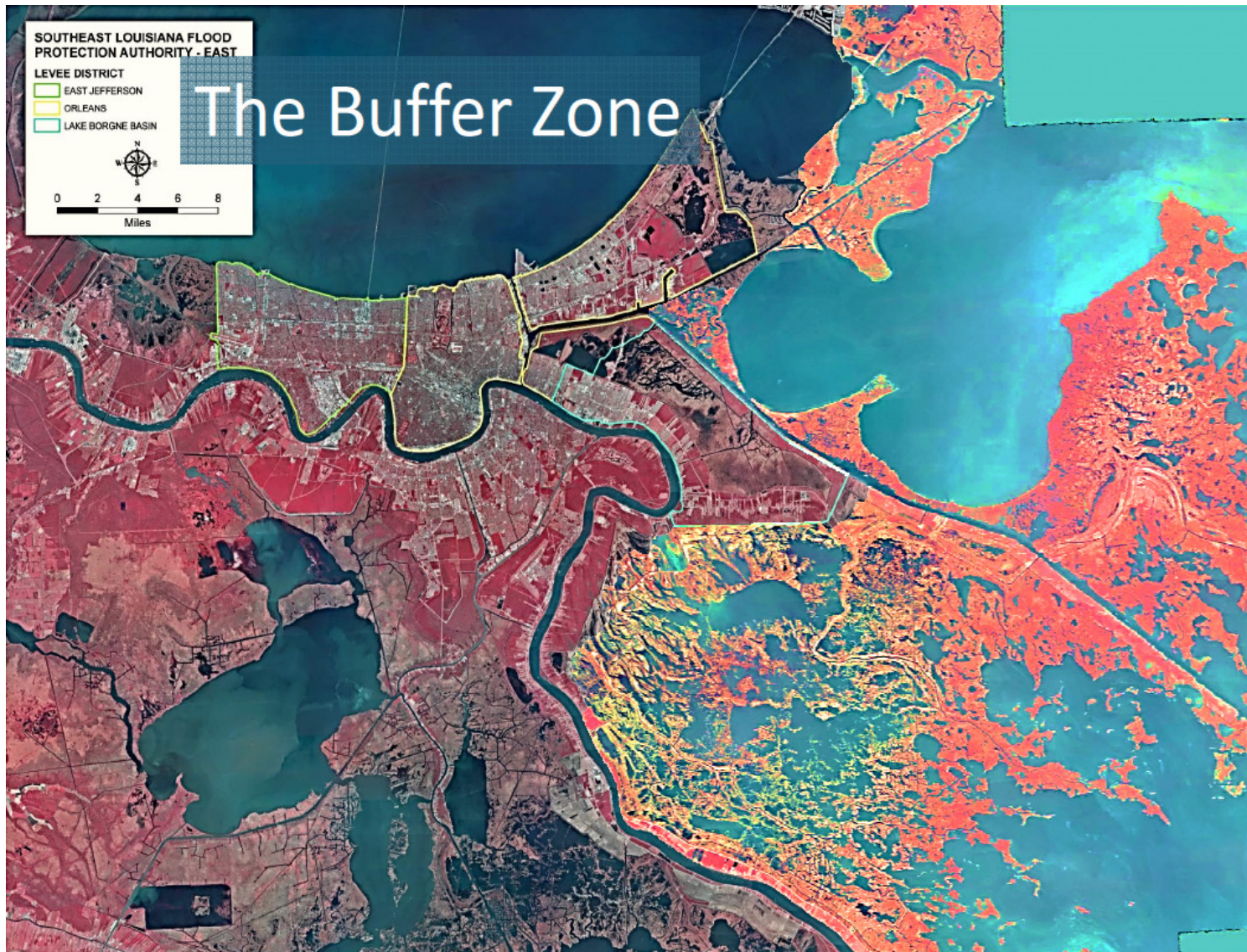
Southeast LA Flood Protection Authority–East



Levee Board Suite

Removed → motion to remand denied and suit dismissed

1. Negligence



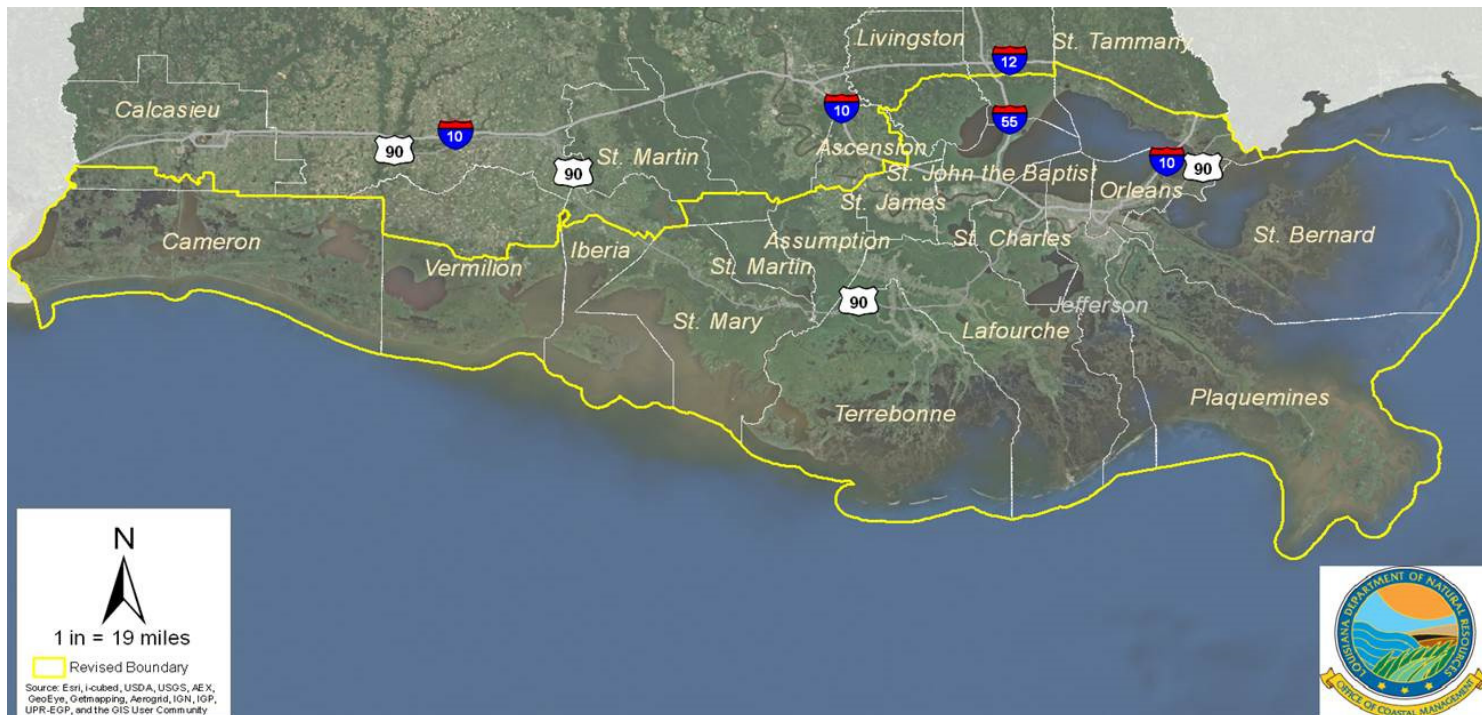
Levee Board Suit

Removed → motion to remand denied and suit dismissed

1. Negligence
2. Breach of Contract
3. Nuisance/servitude of drain.

The Louisiana Coastal Zone

Parishes (all or parts of): Ascension, Assumption, Calcasieu, Cameron, Iberia, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion



Government Plaintiff

Parishes (all or parts of): Ascension, Assumption, Calcasieu, Cameron, Iberia, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion



1. Plaquemines: 21 suits
2. Jefferson: 7 suits
3. Cameron: 11 suits
4. Vermilion: 1 suit
5. St. Bernard: 1 suit

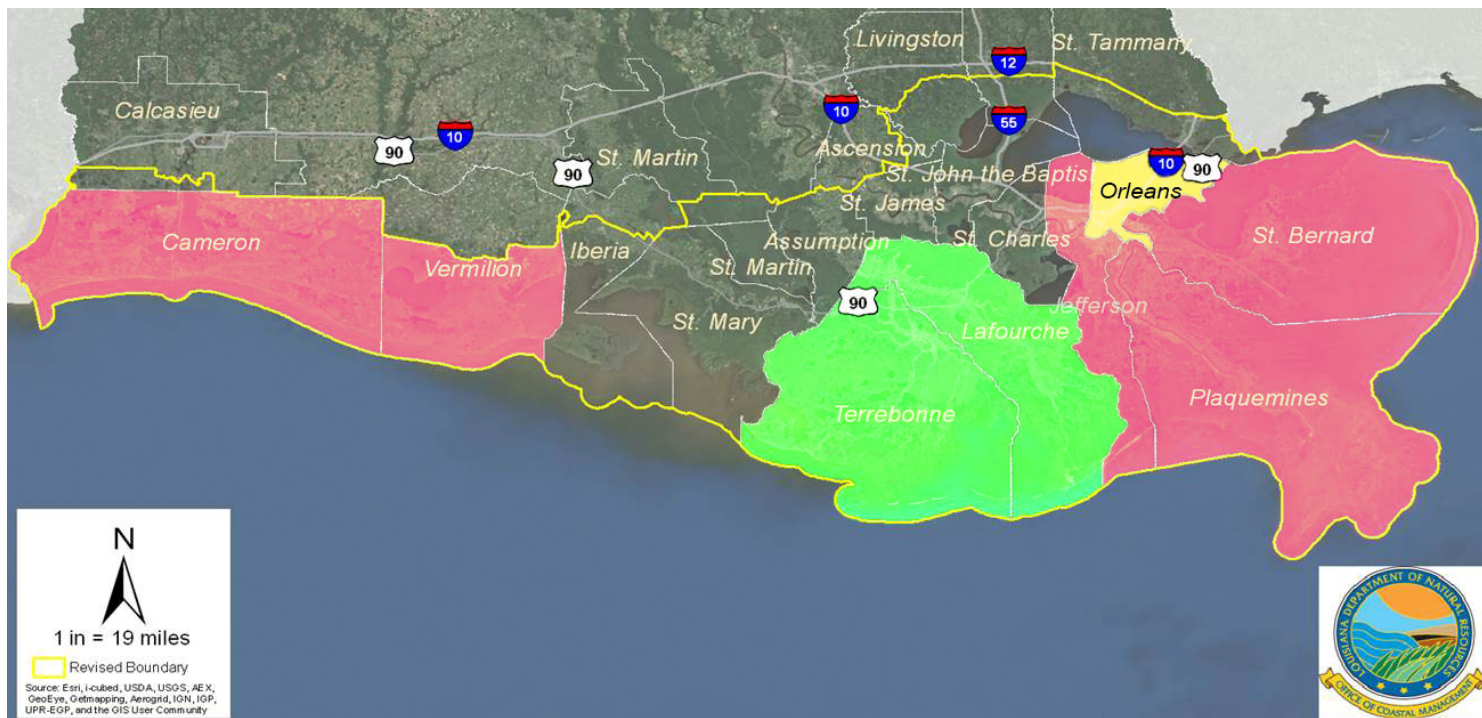
Government Plaintiff

Parishes (all or parts of): Ascension, Assumption, Calcasieu, Cameron, Iberia, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion



Government Plaintiff

Parishes (all or parts of): Ascension, Assumption, Calcasieu, Cameron, Iberia, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion



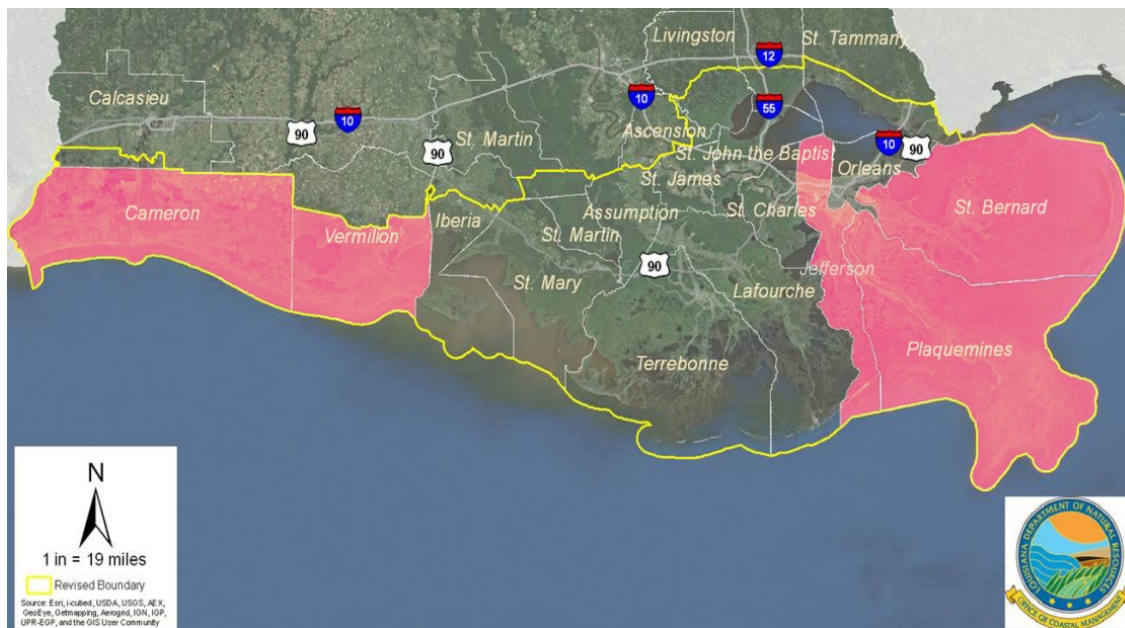
Private Landowner Plaintiff

Parishes (all or parts of): Ascension, Assumption, Calcasieu, Cameron, Iberia, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion



Private Landowner Plaintiff

Parishes (all or parts of): Ascension, Assumption, Calcasieu, Cameron, Iberia, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion



1. Plaquemines: 21 suits
2. Jefferson: 7 suits
3. Cameron: 11 suits
4. Vermilion: 1 suit
5. St. Bernard: 1 suit

Political Struggle Between Governor and Attorney General



Private Landowner Plaintiff

Parishes (all or parts of): Ascension, Assumption, Calcasieu, Cameron, Iberia, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion



Overview of Environmental Suits

Suit	General Legacy Suits	Levee Board	CZMA: Government	CZMA: Private Landowners
Court	Mainly state court	Federal: denial of remand on appeal	State: Plaquemines & Jefferson Uncertain: Cameron, Vermilion & St. Bernard	State: Jefferson Federal: Plaquemines
Types of Defendants	Operators, pipelines, lessees, servitude owners	Operators and pipeline companies	Operators and pipeline companies	Operators and pipeline companies
Claims	Environmental damage, such as contamination	Coastal erosion caused by dredging and failure to maintain canals	Coastal erosion caused by dredging and failure to maintain canals	Coastal erosion caused by dredging and failure to maintain canals
Plaintiffs' Attorney	About five firms in the state handle the vast bulk	Jones Swanson	Parish: Talbot, Carmouche & Marcello LDNR: in-house	Jones Swanson; Veron, Bice & Palermo
Status	Ongoing, with no sign of slowing down	Dismissed, appeal pending in 5th Circuit	Plaquemines: March 1 hearing on exceptions Jefferson: writ filed with La. SC Cameron, Vermilion: waiting on ruling in Levee Bd. St. Bernard: Feb. 1 submission date for motion to remand	Jefferson: amending petition Plaquemines: trial date

Predictions for 2017

1. Pace of the court
2. Unknown with Trump administration



DEVELOPMENTS 2017
PROFESSIONAL LANDMEN'S ASSOCIATION OF NEW
ORLEANS SEMINAR AND EXECUTIVE NIGHT
FEBRUARY 23, 2017

NICOLE W. RUSSELL, DIRECTOR AND TRADING COUNSEL
(877) 667-0594

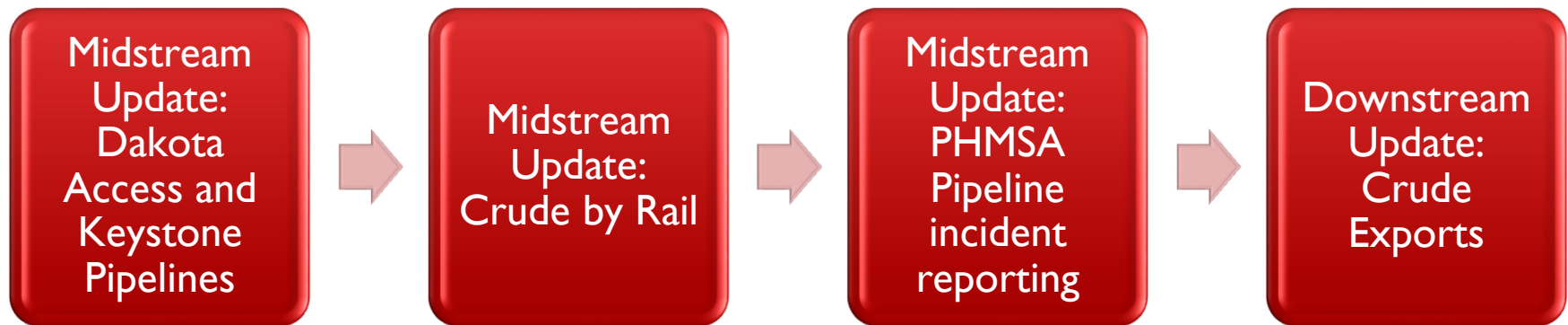
(O) 1

NRUSSELL@TRADINGCOUNSELSOLUTIONS.COM

(M) (917) 715-3524

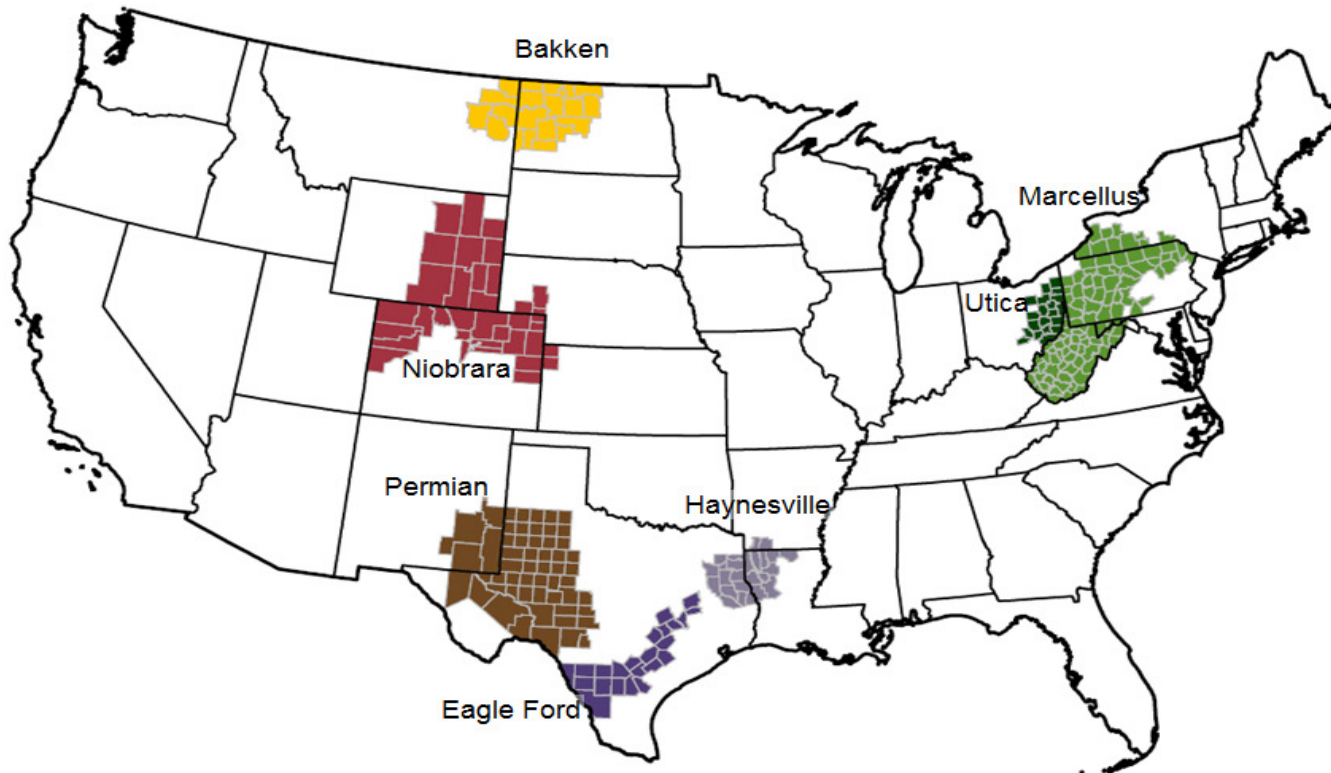
TRADINGCOUNSELSOLUTIONS.COM

THE ROADMAP



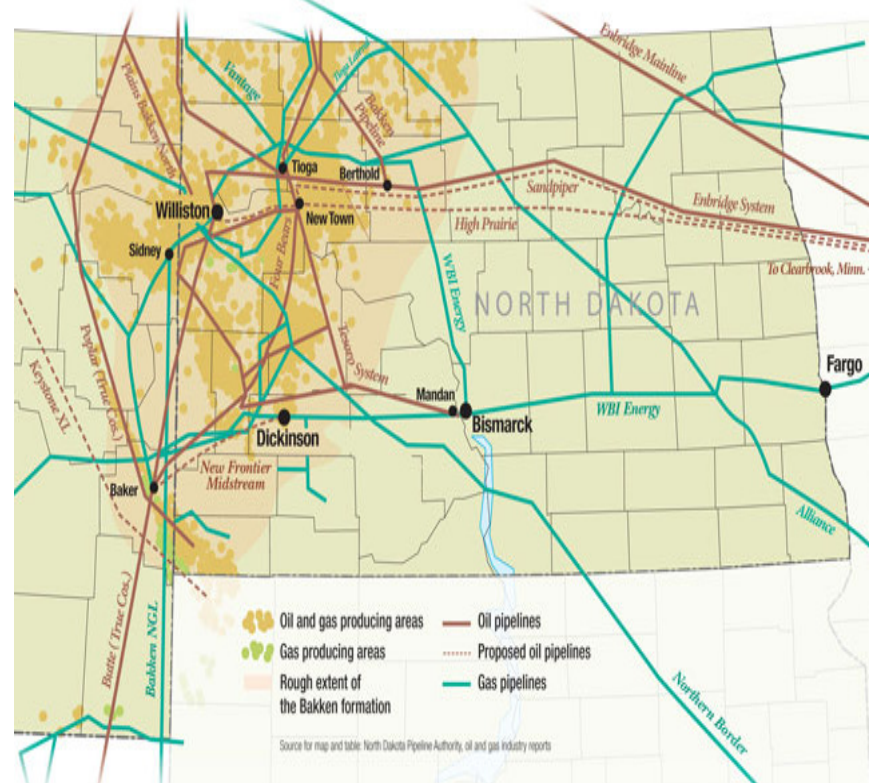
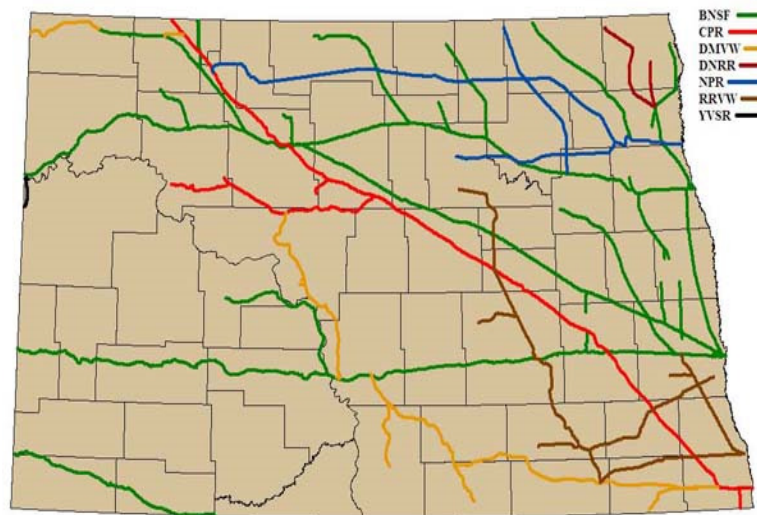
MIDSTREAM UPDATE

WILLISTON BASIN CRUDE BY RAIL AND PIPELINES



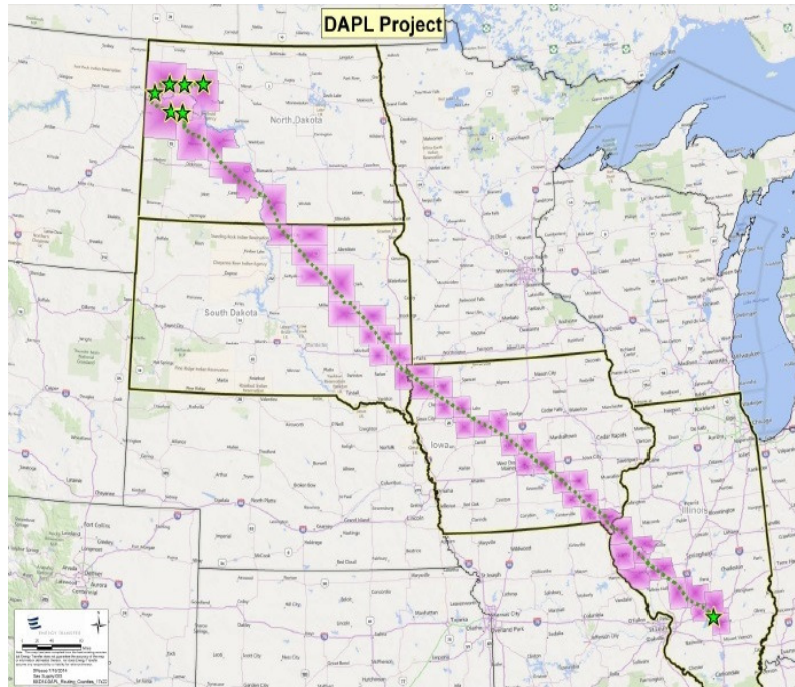
INTERACTION BETWEEN RAIL AND PIPELINE TRANSPORTATION IN WILLISTON BASIN

NORTH DAKOTA STATE RAIL PLAN

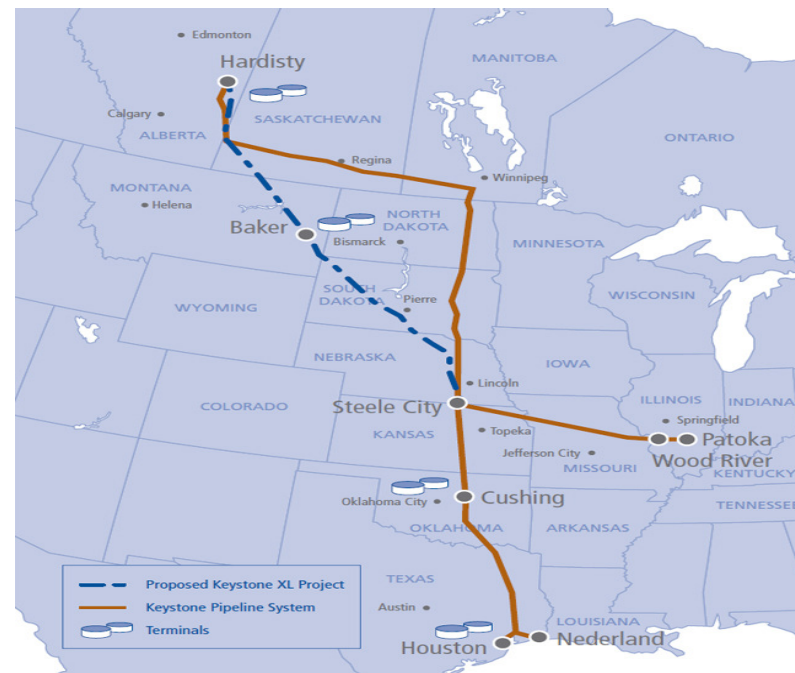


DAKOTA ACCESS AND KEYSTONE XL PIPELINES

Dakota Access: 1,172 mile pipeline connecting the Bakken and Three Forks North Dakota production fields to an existing terminal near Pakota, Illinois



Keystone XL: 1,179 mile pipeline built by TransCanada from Hardisty, Alta in Canada, past Bismarck connecting to the Keystone Pipeline system in Steele City, Nebraska



DAKOTA ACCESS TIMELINE

- **December 2014:** Energy Transfer Partners applies to build the pipeline
- **March 11, 2016:** final state approval (Iowa) for pipeline
- **April 29, 2016:** Standing Rock Sioux tribe petition the US Army Corps of Engineers for a more thorough Environmental Impact study
- **July 26, 2016:** US Army Corp. of Engineers approves land easements
- **July 27, 2016:** Standing Rock Sioux tribe sues US Army Corps of Engineers and seeks construction stay
- **September 9, 2016:** Judge denies stay except for small area near Lake Oahe
- **October 9, 2016:** Stay appeal denied with respect to construction on private land
- **December 4, 2016:** Army Corps of Engineers denied easement crossing Lake Oahe
- **January 18, 2017:** Army Corps of Engineers Notice of Intent to prepare environmental impact statement
- **January 24, 2017:** President Trump issued Executive Order which directed “the acting secretary of the Army to expeditiously review requests for approval to construct and operate the Dakota Access Pipeline. . .”
- **February 7, 2017:** Army Corps of Engineers grants final easement on government land at Lake Oahe Dam.
- **February 14, 2017:** Summary judgement filing in existing suit pending in US District Court in DC

KEYSTONE XL

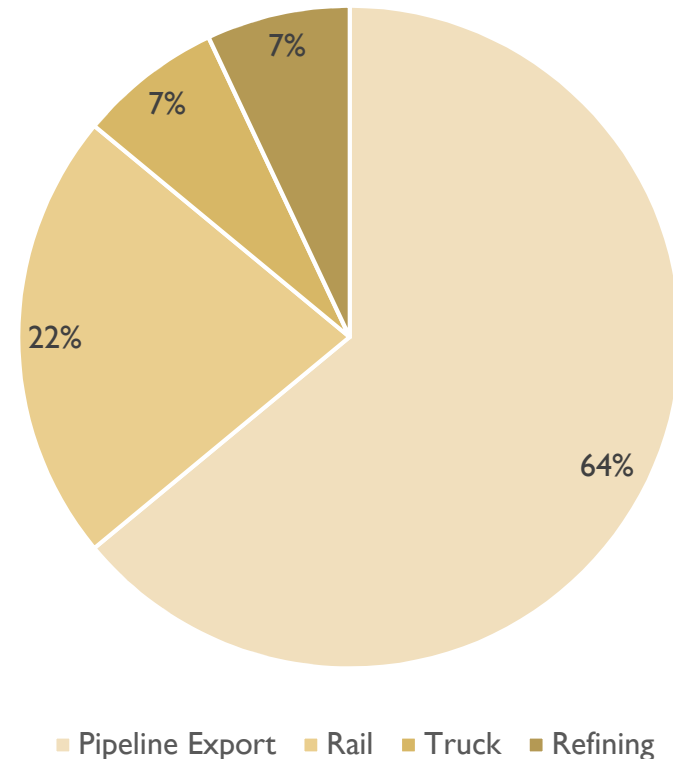
- **September 19, 2008:** TransCanada files for a cross-border permit with the US State Department
- **January 18, 2012:** President Obama rejects TransCanada's permit
- **May 4, 2012:** TransCanada submits second request for permit to US State Department
- **January 31, 2014:** District Court in Nebraska declares law allowing pipeline route through State unconstitutional
- **April 18, 2014:** US State Department extends inter-agency review indefinitely
- **January 29, 2015:** Keystone Pipeline Approval Act passed by the Senate
- **February 11, 2015:** Keystone Pipeline Approval Act passed by the House
- **February 25, 2015:** Keystone Pipeline Approval Act vetoed by President Obama
- **March 4, 2015:** Senate fails to override Presidential Veto by required 2/3 vote
- **November 2, 2015:** TransCanada asks US State Department to suspend review of Permit pending Nebraska case
- **November 6, 2015:** President Obama rejects TransCanada application to build pipeline
- **January 24, 2017:** Executive Order to expedite final approval on Keystone XL
- **January 26, 2017:** TransCanada resubmitted its application for presidential permit
- **February 16, 2017:** TransCanada files application in Nebraska for pipeline route

PRESIDENTIAL MEMO RE: CONSTRUCTION OF PIPELINES AND IMPEDIMENTS TO KEYSTONE AND DAKOTA ACCESS

- **Presidential Memorandum regarding Construction of American Pipelines:** requires the Secretary of Commerce, in consultation with all relevant executive departments and agencies to develop a plan for new, retrofitted, repaired or expanded pipelines to use materials and equipment produced in the United States. Plan to be submitted within 180 days.
- **Dakota Access:** On-going legal battle in US Army Corps of Engineers suit and pending summary judgement
- **Keystone XL:**
 - Presidential Permitting Process
 - Potential Green Group Challenges on reliance of 2014 Final Supplemental Environmental Impact Statement
 - Nebraska landowner challenges

WILLISTON BASIN TRANSPORTATION

- Dakota Access Pipeline claims it can eliminate 500-740 rail cars and/or 250+ trucks being used daily in the Bakken.
- A unit train of crude can be as many as 60,000 BBLs
- Unit train is 104 rails cars
- Propose eliminating between 5-7 trains per day
- November 2016 Production 1,094,282



CRUDE BY RAIL REGULATION

- DOT Issued a regulation specific to crude by rail in May 2015
 - Limited operations of high hazard flammable trains in terms of speed, braking systems and routing;
 - Adopted safety improvements on railcars;
 - Instituted a sampling and testing program for crude by truck and rail;
 - Created a requirement that offerors of crude by truck and rail must have a sampling and testing policy.

CRUDE BY RAIL

LAC-MÉGANTIC: BEFORE AND AFTER



1. The railroad
2. The Musi-Café, a popular watering hole that was busy at the time of the explosions
3. The library
4. The former site of a Dollarama store
5. A commercial building

SOURCE: LA PRESSE

6. An old chapel that housed a restaurant-bar
7. A Bank of Montreal location
8. A stationery store
9. A gift shop called "l'Ambrequin"
10. A residential area near the Boulevard of Veterans

PHOTOS: YVES TREMBLAY / PHOTO HELICO, RYAN REMIORZ / THE CANADIAN PRESS
GRAPHIC: ALEXANDRA BOSANAC & JONATHAN RIVAIT / NATIONAL POST

CLASSIFICATION OF MATERIAL UNDER MAY 2015 REGULATION AND SAMPLING AND TESTING

Classification

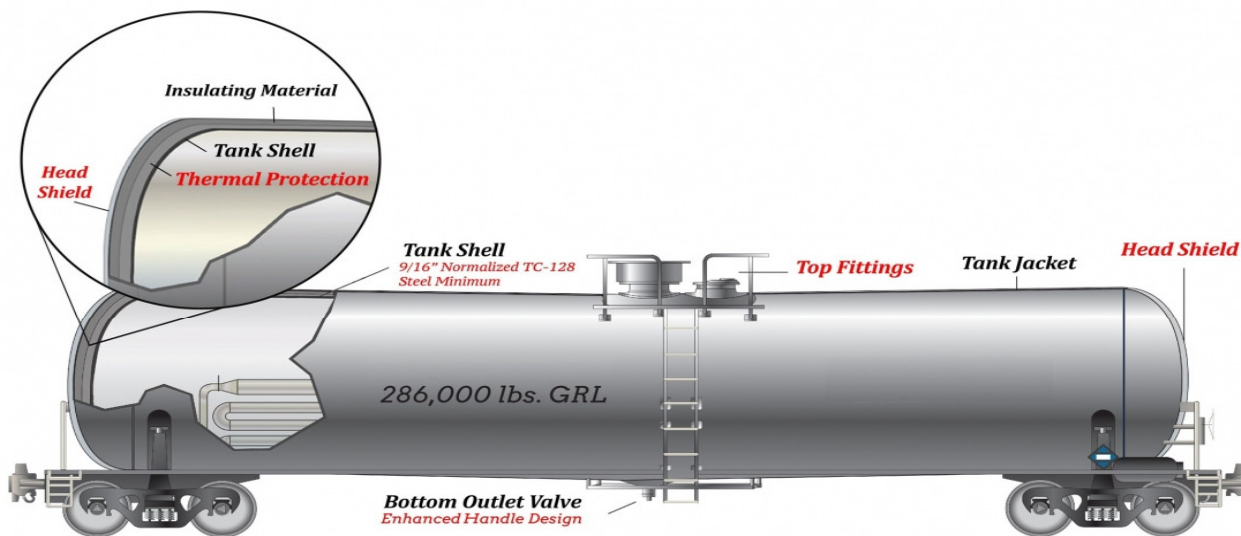
- Classification issues:
 - How much testing is enough?
 - What are the testing requirements (HMR 173.120):
 - Initial Boiling Point
 - Flash Point
 - How is data kept?
 - Who is responsible for testing?
 - Who is responsible to review the results?

Sampling and Testing Plan

- **Sampling and Testing Program**
 - **Frequency of sampling and testing** that accounts for any appreciable variability of the material (history, temperature, method of extraction, location of extraction, time of year, length of time between shipments);
 - **Sampling prior to the initial offering** of the material for transportation and **when changes occur** that may affect the properties of the material;
 - **Sampling methods** that ensure a representative sample;
 - **Testing methods** that ensure the correct classification under the HMR;
 - **Quality control** for sampling frequencies;
 - **Duplicate sampling** to ensure quality;
 - **Criteria for modifying** the sampling and testing program;
 - Testing or other appropriate methods used to **identify properties of the mixture relevant to packaging requirements**.

DOT 117 SPECIFICATIONS

DOT 117 Specification Car



Safety enhancements of DOT Specification 117 Tank Car:

- Full-height ½ inch thick head shield
- Tank shell thickness increased to 9/16 inch minimum TC-128 Grade B, normalized steel
- Thermal protection
- Minimum 11-gauge jacket
- Top fittings protection
- Enhanced bottom outlet handle design to prevent unintended actuation during a train accident

RAILCAR RETROFIT/NEW BUILD SCHEDULE

■ Railcar Specifications

Timeline for the Retrofit of Affected Tank Cars for Use in North American HHFTs			
Tank Car Type / Service	US Retrofit Deadline*	Tank Car Type / Service	TC Retrofit Deadline
Non Jacketed DOT-111 tank cars in PG I service	(January 1, 2017) ¹ January 1, 2018	Non Jacketed DOT-111 tank cars in Crude Oil service	May 1, 2017
Jacketed DOT-111 tank cars in PG I	March 1, 2018	Jacketed DOT-111 tank cars in Crude Oil service	March 1, 2018
Non Jacketed CPC-1232 tank cars in PG I service	April 1, 2020	Non Jacketed CPC-1232 tank cars in Crude Oil service	April 1, 2020
Non Jacketed DOT-111 tank cars in PG II service	May 1, 2023	Non Jacketed DOT-111 tank cars in Ethanol service	May 1, 2023
Jacketed DOT-111 tank cars in PG II service	May 1, 2023	Jacketed DOT-111 tank cars in Ethanol service	May 1, 2023
Non Jacketed CPC-1232 tank cars in PG II service	July 1, 2023	Non Jacketed CPC-1232 tank cars in Ethanol service	July 1, 2023
Jacketed CPC-1232 tank cars in PG I and PG II service and all remaining tank cars carrying PG III materials in an HHFT (pressure relief valve and valve handles).	May 1, 2025	Jacketed CPC-1232 tank cars in in Crude and Ethanol service and all remaining tank cars carrying PG III materials in an HHFT (pressure relief valve and valve handles).	May 1, 2025

ON-GOING RAIL REGULATION

- **Notice of Public Rule Making by PHMSA** July 13, 2016, RIN 2137, Hazardous Materials: Oil Spill Response Plans and Information Sharing For High-Hazard Flammable Trains (HFFT):
 - Requires comprehensive oil spill response plans for trains carrying 20 or more loaded cars in a block or 35 or more loaded trains throughout.
 - Requires railroad develop response zones for quick response in worst case discharge scenarios;
 - Share information on HHFTs with State and Tribal commissions;
 - Include ASTM D7900 as a method to test of initial boiling point incorporating API RP-3000
- Comment period complete 9/29/2016
- Expected Publication 7/28/2017

PHMSA ENHANCED PIPELINE SPILL REPORTING REQUIREMENTS

- **January 23, 2017** – PHMSA issued final rule on Operator Qualification, Cost Recovery, Accident and Incident Notification and other Pipeline Safety Changes – **effective March 24, 2017**
- Operator must electronically or telephonically report notice of an accident or incident at the **earliest practicable moment** but no later than **one hour** of **confirmed discovery of event**.
- Revision or confirmation of initial notification **within 48 hours** of confirmed discovery of accident or incident including amount of product released, estimate of number of fatalities and injuries and other significant facts.
- Gives effect to Congressional mandate for PHMSA to regulate notice of “confirmed discovery” accidents or incidents per 2011 Pipeline Safety, Regulatory Certainty and Job Creation Act.
- **Confirmed Discovery** means when it can be reasonably determined, based on information available to the operator at the time a reportable event has occurred, even if only based on a preliminary evaluation.

DOWNSTREAM UPDATE

- Crude Exports
 - Congress lifted a 40 year ban on exporting oil.
 - Oil exports were banned in 1975 in the Energy Policy Conservation Act (ECPA) - two years after an OPEC embargo that banned oil sales to the U.S.
 - ECPA prohibited crude exports unless allowed by the President in the “national interest”.
 - 2016 Omnibus Appropriations Bill (December 18, 2015) included a repeal of the ban of US produced Crude Oil.
 - Bureau of Industry and Security (BIS) part of the US Department of Commerce, governs export restricted items.
 - BIS administers the Export Administration Regulations (EAR)
 - EAR prohibits the export of items that are in “short supply” without a license. Crude Oil was listed as a “short supply” item until May 12, 2016.

CRUDE OIL EXPORTS

U.S. Exports First Freely Traded Oil in 40 Years

Energy companies race to ship abroad after
ban is lifted

-Wall Street Journal, January 13, 2016

BIS REGULATION

ECCN IC981 - “Crude oil” was defined as a mixture of hydrocarbons that

- (i) existed in liquid phase in underground reservoirs and
- (ii) remains liquid at atmospheric pressure after passing through surface separating facilities and
- (iii) which has not been processed through a crude oil distillation tower.**

Included are reconstituted crude petroleum, and **lease condensate** and liquid hydrocarbons produced from tar sands, gilsonite, and oil shale. Drip gases are also included, but topped crude oil, residual oil, and other finished and unfinished oils are excluded.”

Until May 12, 2016 – Obtain an export license or self-classify as distillate requiring:

- Distillation Tower;
- Process that “Materially Transforms” the condensate (API Gravity);
- Produces a product that have purposes of petroleum products.

PRESIDENTIAL POWER AND OTHER EXPORT RESTRICTIONS

Under the 2016 Appropriations Act, the President may still impose export licensing requirements or other restrictions on crude oil exports

Generally:

- To sanctioned countries or persons

For a period of not more than one year:

- President formally declares a national emergency in the Federal Register;
- Pursuant to sanctions or trade restrictions for national security purposes
- If recommended by the Secretary of Commerce with the Secretary of Energy due to export of crude creating supply shortages, above global market pricing of oil or negative US employment effects.

Changes to the Export Administration Regulations:

- Crude Oil is now EAR 99 so freely exported without a license
- **EXCEPT:**
 - Continue to require authorization from BIS to export to:
 - embargoed or sanctioned countries or persons; and
 - to persons subject to a denial of export privileges

TRADING COUNSEL SOLUTIONS

CONTACT:

NICOLE W. RUSSELL, DIRECTOR AND TRADING COUNSEL
NRUSSELL@TRADINGCOUNSELSOLUTIONS.COM

(O) 1 (877) 668-0594

(M) (917) 715-3524

