**PROFESSIONAL LANDMEN'S ASSOCIATION**
**OF NEW ORLEANS**

# EXECUTIVE NIGHT
# OIL AND GAS SEMINAR

**THURSDAY, March 3, 2011**
**8:30 AM TO 5:00 PM**

**NEW ORLEANS RIVERSIDE HILTON HOTEL**
**BELLE CHASSE ROOM, 3RD FLOOR**
**NEW ORLEANS, LOUISIANA**

P.O. BOX 51123
NEW ORLEANS, LA 70151-1123

# PROFESSIONAL LANDMEN'S ASSOCIATION OF NEW ORLEANS

## PROGRAM COMMITTEE:

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

David Seay
Century Exploration of New Orleans, Inc.

Collette R. Gordon
Liskow & Lewis

Philip D. Nizialek
Carver, Darden, Koretzky, Tessier, Finn,
Blossman & Areaux LLC

P.O. BOX 51123
NEW ORLEANS, LA 70151-1123

# Professional Landmen's Association of New Orleans
# 2011 EXECUTIVE NIGHT SEMINAR
# THURSDAY, MARCH 3, 2011
# 8:30 a.m. to 5:00 p.m.

## NEW ORLEANS RIVERSIDE HILTON HOTEL
## NEW ORLEANS, LOUISIANA

**8:30 am REGISTRATION/COFFEE SERVICE—Belle Chasse Room, 3rd Floor**

**INTRODUCTORY REMARKS**

**AIMEE WILLIAMS HEBERT**
**Chair, PLANO Education Committee**
**Member**
Gordon, Arata, McCollam, Duplantis & Eagan, LLC
201 St. Charles Avenue, 40th Floor
New Orleans, Louisiana 70170-4000

**9:00 am – 10:00 am**

*Topic:* **SELECT TITLE ISSUES AFFECTING PROPERTIES ON THE OCS**

**Speakers:**

C. PECK HAYNE, JR.
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Duplantis & Eagan, LLC
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**ANDREW M. ADAMS**
**Member**
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Houston, Texas 77027
Email: aadams@glllaw.com

**BREAK**

**10:15 am – 11:15 am**

*Topic:* **WHAT TO DO WITH THE LEFTOVERS? OWNERSHIP ISSUES ASSOCIATED WITH ABANDONED PLATFORMS, WELLS, AND UNITS**

**Speakers:**

**MATTHEW J. FANTACI**
**Attorney**
Carver, Darden, Koretzky, Tessier,
Finn, Blossman & Areaux, LLC
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**TODD P. SCHOEFFLER**
**President, Senior Project Manager**
Schoeffler Energy Group
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Lafayette, Louisiana 70508
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**11:15 am – 11:45 am**

*Topic:* **MMS TRANSFORMATION – CURRENT AGENCY ORGANIZATION AND STATUS OF ITS REGULATORY REFORMS ON THE OCS: A VIEW FROM THE BOEMRE**

**Speaker:**

**LARS HERBST**
**Regional Director, Gulf of Mexico**
Bureau of Ocean Energy Management,
Regulation and Enforcement
1201 Elmwood Park Blvd.
New Orleans, LA 70123-2394

**LUNCH 11:45 am – 1:00 pm**

**1:00pm -1:30pm**

*Topic:* **MMS TRANSFORMATION – CURRENT AGENCY ORGANIZATION AND STATUS OF ITS REGULATORY REFORMS ON THE OCS: A VIEW FROM THE INDUSTRY**

**Speaker:**

**CRAIG CASTILLE**
**Deepwater Operations Manager**
Stone Energy Corporation
P.O. Box 52807
Lafayette, Louisiana 70505
Email: castillect@stoneenergy.com

**1:30 pm – 2:30 pm**

*Topic:* **DECOMMISSIONING OBLIGATIONS FOR PROPERTIES LOCATED ON THE OCS**

**Speakers:**

**SCOTT A. O'CONNOR**
**Member**
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Duplantis & Eagan, LLC
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**BILL NAPIER**
**President**
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Covington, Louisiana 70433
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**BREAK**

**2:45 pm – 3:45 pm**

*Topic:* **ACT 312 SETTLEMENT PROCESS – A VIEW FROM THE PLAINTIFF'S AND DEFENSE BARS**

**Speakers:**

**STEVEN B. RABALAIS**
**Member**
Rabalais & Hebert, LLC
701 Robley Drive, Suite 210
Lafayette, Louisiana 70503
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**Partner**
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**3:45 pm – 5:00 pm**

*Topic:* **ETHICS: A REVIEW OF THE NEW RULES OF PROFESSIONAL CONDUCT FOR ATTORNEYS IN TEXAS, THE "OLD" RULES IN LOUISIANA, AND AAPL RULES FOR PROFESSIONAL LANDMEN**

**Speakers:**

**JANIS H. DETLOFF**
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**LACRECIA G. CADE**
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**DAVID A. SEAY**
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# PROFESSIONAL LANDMEN'S ASSOCIATION OF NEW ORLEANS

# EXECUTIVE NIGHT OIL AND GAS SEMINAR

March 3, 2011

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P.O. BOX 51123
NEW ORLEANS, LA 70151-1123

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LARS HERBST

GLADSTONE N. JONES, III

BILL NAPIER

SCOTT A. O'CONNOR

STEVEN B. RABALAIS

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# ANDREW M. ADAMS

**Member**
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ANDREW ADAMS is a member at the firm of Gieger, Laborde & Laperouse. Andy has a career practice in the energy law field. His practice focuses on assisting clients with the negotiation, preparation and interpretation of contracts pertaining to the upstream oil and gas industry, with an emphasis on the Gulf Coast region of Texas and Louisiana and federal lands in the Gulf of Mexico, Outer Continental Shelf. Examples of these types of contracts include Purchase and Sale Agreements, onshore and offshore Operating Agreements, Farmout Agreements, Participation Agreements, Seismic Agreements and Production Handling Agreements. His practice also includes the examination of title for exploration and production related activities.

From 1985 to 1999, he was employed by Shell Oil Company and its affiliated companies, with areas of responsibility covering onshore and Shelf and Deepwater Gulf of Mexico projects, including negotiating and drafting of various types of oil and gas related contracts.

Andy has been a speaker at the 41st Annual Institute for Professional Landmen, the 2002 AAPL Gulf Coast Land Institute, and the 2003 PLANO Executive Night Seminar and he has authored Oil and Gas, Fifth Circuit Symposium, Loyola Law Review (2001). He is a member of the Professional Landmen's Association of New Orleans, American Association of Professional Landmen and Houston Association of Professional Landmen.

# LACRECIA G. CADE

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LACRECIA CADE is an attorney practicing commercial litigation in the areas of insurance coverage, products liability, employment, maritime, and oil and gas at Carver, Darden, Koretzky, Tessier, Finn, Blossman & Areaux LLC in New Orleans, LA. Ms. Cade is a graduate of the American University in Washington, DC where she obtained a B.A. in Communications, Legal Institutions, Economics and Government, and a graduate of the College of William and Mary, Marshall-Wythe School of Law in Williamsburg, VA where she obtained her J.D. While in Washington, D.C., Ms. Cade had the privilege of serving at the President's Initiative on Race under President Bill Clinton. A native of Atlanta, Georgia, Ms. Cade moved to New Orleans in 2008 to join her musician husband. Since arriving in New Orleans, Ms. Cade has furthered her commitment to the Louisiana legal community and beyond. Ms. Cade is a founding member and President of the Louisiana Association of Black Women Attorneys (LABWA), the Vice President of the Association of Women Attorneys of New Orleans Louisiana (AWANOLA), and the Vice Chair of the American Bar Association Young Lawyers Division Minorities in the Profession Committee. Ms. Cade also serves as a member of various LSBA Committees, the Women's Leadership Council for the United Way of Greater New Orleans, the National Bar Association, the Federal Bar Association, and the New Orleans Bar Association. Ms. Cade is a participant in the Young Careerist Program for the Louisiana Association of Business and Professional Women. A mother of two daughters, ages 3 and 11, Ms. Cade and her husband reside in Metairie, LA.

# CRAIG CASTILLE

**Deepwater Operations Manager**
**Stone Energy Corporation**
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CRAIG CASTILLE is a native of Breaux Bridge, LA. and began working as a roughneck in the oilfields of Louisiana in 1979. He earned a BS in Petroleum Engineering from the University of Southwestern Louisiana (USL, now ULL) in 1985. Post graduation experience includes positions of increasing authority at Freeport McMoRan, CNG Producing, Dominion E&P and Eni Petroleum. His experience includes drilling for oil, gas and sulfur in the Gulf of Mexico, mining operations in Indonesia and deepwater drilling in the Santos Basin Brazil. Craig joined Stone in March of 2010 to help prepare the company for deepwater growth opportunities and is now their Deepwater Operations Manager.

Craig has served API's Executive Committee on Drilling & Production Operations, The Offshore Operators (OOC) Technical Subcommittee, OOC Drilling Technical Subcommittee (DTSC), OOC Executive Subcommittee and the American Association of Drilling Engineers. He is currently co-chairman of the Drilling Technical Subcommittee for the OOC and was Chairman from 2004-08 when the Industry was faced with numerous hurricane recovery efforts. While serving as Chairman of the DTSC he helped the Industry develop a better understanding of the GOM met-ocean environment which lead to improvements in moored and fixed platform design criteria and assessments. Additionally he championed work that investigated MODU mooring reliability and the development of a standardized risk assessment for moored drilling operations. He also helped launch the most recent blowout preventer reliability work done for subsea and surface BOPE in the GOM.

Since returning to the GOM and while employed by Stone Energy, he has helped OOC, API and GEST develop commentary to the regulatory reforms promulgated by BOEMRE

# JANIS H. DETLOFF

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JANIS DETLOFF'S practice is geared to technology-related issues and she has utilized her scientific education in trying cases on drilling blowouts, pipeline explosions, crane accidents, ship collisions, foundation failures, chemical exposures, industrial fires, and refinery injuries. With these types of cases, commercial disputes are prone to arise over trade secret or insurance and indemnity issues, including the defense of insurance coverage disputes that typically involve millions of dollars in claims. Janis' clients include manufacturers, distributors, and retailers of chemicals, equipment and machinery as well as insurance companies. Her litigation experience includes disputes related to contract, tort, products liability, intellectual property, and construction issues.

Janis has an affinity for the oil and gas industry, having experience as a petroleum geologist with Amoco Production Company, Monsanto Company, and Amerada Hess Corporation, prior to attending law school. With those companies, Janis was involved in wildcat, appraisal, and exploitation drilling for oil and gas in the Texas Gulf Coast, the Gulf of Mexico, offshore Western Africa, Northern Europe, and the North Sea.

# MATTHEW J. FANTACI

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MATTHEW FANTACI is an attorney at the firm of Carver, Darden, Koretzky, Tessier, Finn, Blossman & Areaux located in New Orleans, Louisiana. He rejoined the firm in 2010. Mr. Fantaci was at the firm from 2004-2009, he then spent one year as an Assistant United States Attorney for the Eastern District of Louisiana, practicing in the Civil Division defending suits filed against the Unites States.

He received his Bachelors of Arts in journalism from the University of Georgia in 1998. In 2002, Mr. Fantaci received his law degree from Louisiana State University. While at L.S.U. he served on the Board of Editors of the Louisiana Law Review and was a member of Order of the Coif. Following graduation, Mr. Fantaci served two years as a judicial law clerk, first with Justice Jeffrey P. Victory of the Louisiana Supreme Court and then with Judge W. Eugene Davis of the United States Court of Appeals for the Fifth Circuit.

# COLLETTE R. GORDON

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COLLETTE GORDON is an attorney for the law firm of Liskow & Lewis located in New Orleans, Louisiana, in the firm's Energy and Natural Resources Law and Business Law sections. Her practice in energy focuses on oil and gas acquisitions and divestitures, energy-related contract drafting, onshore and offshore title examination, and pipeline issues. Additionally, Ms. Gordon's practice includes compliance with the Hart Scott Rodino Act and national security reviews conducted by the Committee on Foreign Investment in the United States under the Exon-Florio Act. Ms. Gordon also concentrates on real estate transactions, corporate and business matters and commercial lending.

# C. PECK HAYNE

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PECK HAYNE is a member at the law firm of Gordon, Arata, McCollam, Duplantis & Eagan located in New Orleans, Louisiana. Peck's practice centers on oil and gas, pipeline and other energy-related transactions and regulation and on federal appellate litigation. He is listed in *Best Lawyers in America* and *Louisiana Super Lawyers*.

Peck regularly negotiates, drafts and advises clients on complex purchase and sale agreements, operating agreements, mineral leases, right-of-way agreements, transportation and interconnection agreements, gas storage agreements and settlement agreements in complex litigation and other disputes. He also frequently renders title opinions on complex petroleum titles in Louisiana and on the Outer Continental Shelf and assists both lenders and borrowers in the financing of onshore and offshore oil and gas properties. He has represented clients before numerous Louisiana and federal regulators for oil, gas and energy industry. This advice and representation includes transportation, gathering, sale, tariff and pipeline safety issues for both oil and gas; LNG and gas storage; accounting audits; audits of unclaimed mineral proceeds; and operations on the Outer Continental Shelf for offshore leases and rights-of-way.

Peck also regularly represents clients in federal appellate litigation. He's convinced a Fifth Circuit panel to vacate its initial decision and rule the other way. This past year, he successfully obtained expedited rulings in two unrelated matters. In cases of industry-wide importance, he's found amicus parties who filed supporting briefs.

Peck has published numerous law review articles on oil and gas matters and is also a contributing author to *Energy Law and Transactions* (Matthew Bender). He is licensed to practice in Louisiana, New York and Texas and in various federal courts, including the United States Supreme Court. He has received multiple awards for his *pro bono* legal services.

# LARS HERBST

**Regional Director, Gulf of Mexico**
**Bureau of Ocean Energy Management,**
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LARS HERBST is the Regional Director for the Gulf of Mexico OCS Region of the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE). As the Regional Director, Mr. Herbst manages the leasing of the OCS lands for oil, gas, and other mineral development, and supervises the regulation of operations and protection of the environment on those leases which involve 3,500 production platforms. This area covers the five Gulf Coast States. He manages a staff of 550, which includes geologists, geophysicists, petroleum engineers, biologists, and environmental scientists.

Before his selection as Regional Director, he served as Acting Regional Director and as Regional Supervisor for Field Operations. The Field Operations office evaluates and approves operator proposals to install and modify platforms and pipelines on Outer Continental Shelf (OCS) leases, evaluates new technology to be used in the Gulf of Mexico (GOM), reviews and approves exploration and development plans, and administers the GOM accident investigation and civil penalty programs. He managed 180 employees, including District Offices in Houma, Lafayette, Lake Charles, and New Orleans, Louisiana, and Lake Jackson, Texas.

Mr. Herbst began his career with the bureau in 1983 as a staff engineer in the Gulf of Mexico OCS Region's Technical Assessment unit. He is a registered professional engineer in the State of Louisiana and holds a BS degree in petroleum engineering from Louisiana State University.

BOEMRE's mission includes the effective management of energy and mineral resources located on the nation's outer continental shelf, including the environmentally safe exploration, development, and production of oil, natural gas, and renewable energy.

# GLADSTONE N. JONES, III

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GLADSTONE JONES ("Glad") is the founder and senior managing partner of Jones, Swanson, Huddell & Garrison, L.L.C. Mr. Jones has served as lead counsel in litigation pending in New York, Florida, California, Mississippi and Louisiana. In 2007 Mr. Jones was honored to be named one of the top 500 litigators in the United States.

Mr. Jones is a graduate of Mississippi State University and Tulane Law School, and has extensive experience successfully representing plaintiffs in complex litigation against oil and gas companies, including some of Louisiana's largest landowners.

Mr. Jones is active in the Louisiana Association of Justice, has been an adjunct professor at Tulane University Law School in Toxic Torts, and is a regular speaker at various Continuing Legal Education Seminars. He is licensed to practice before all Louisiana state and federal courts, the Louisiana Supreme Court, and the United States Fifth and Eleventh Circuits.

# BILL NAPIER

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BILL NAPIER is the owner and president of Fairwinds International with domestic and international experience. Mr. Napier is a Civil Engineer with over 33 years of experience in the offshore and onshore Oil & Gas industry. Responsible for all aspects of the project including permitting, engineering, project management, contracts, fabrication, transportation, and installation of onshore and offshore pipelines, structures and facilities.

# SCOTT A. O'CONNOR

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SCOTT O'CONNOR is a member of the law firm of Gordon, Arata, McCollam, Duplantis & Eagan. Scott's practice focuses on energy and complex commercial litigation. He has litigated and arbitrated numerous disputes involving onshore and offshore operating agreements, royalty claims, gas balancing agreements, oil and gas purchase contracts, farmout agreements, preferential purchase rights, and purchase and sale agreements. He has defended national and state class actions involving oil and gas pricing practices, including antitrust litigation, and has represented oil and gas clients as creditors and debtors in bankruptcy proceedings.

Scott is a member of the St. Thomas More Inn of Court, and the American and Houston Associations of Professional Landmen and the Professional Landmen's Association of New Orleans. (Board of Directors 2002-2005)

Scott was a member and Managing Editor of the Loyola Law Review and a member of the Loyola Moot Court Staff. He clerked for the Honorable A. J. McNamara, former Chief Judge of the United States District Court for the Eastern District of Louisiana.

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STEVE RABALAIS is a litigator with broad experience in a variety of fields including trucking, oilfield contamination, construction, insurance coverage, maritime, product liability, and general casualty cases; as well as commercial matters involving business formation, oil and gas operations, employment and contractual disputes. Mr. Rabalais also offers mediation services.

Mr. Rabalais was born October 10, 1960. He received a B.A. from Louisiana State University in 1982 (summa cum laude), and his Juris Doctor from Louisiana State University Law Center in 1985, where he was a member of the Moot Court Board. He is admitted to practice in all of the various civil and appellate courts in Louisiana as well as the U.S. Fifth Circuit Court of Appeals and all U.S. District Courts in Louisiana.

His legal memberships include the Lafayette Parish and Louisiana State Bar Associations. He is a member of the Trucking Industry Defense Association (TIDA), the Louisiana Motor Transport Association, the Transportation Lawyers Association and Louisiana Association of Defense Counsel. He has been a guest speaker at both the American Bar Association "Transportation Megaconference" as well as the Louisiana Motor Transport Association Annual.

# TODD P. SCHOEFFLER

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TODD SCHOEFFLER is the proud father of three children. He and his wife, Jeanne Schwing Schoeffler reside together in Lafayette. Todd began his land career after graduating from the University of Southwestern Louisiana in 1994, with a BS in Business. Todd is currently the President of Schoeffler Energy Group, Inc., a land brokerage firm which is based in Lafayette. He is accredited by the American Association of Professional Landmen as a Certified Professional Landman and is a member of the Lafayette Association of Petroleum Landmen, the American Association of Professional Landmen, the Louisiana Oil & Gas Association, Ark-La-Tex Association of Professional Landmen and the Professional Landmen's Association of New Orleans.

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DAVE SEAY has over 30 years of experience as a petroleum landman handling oil and natural gas exploration, production and operational matters. He is a former Land Manager for Shell Oil Company and has worked for several independent exploration and production companies during his career. Dave has twice served on the Board of Directors of the Professional Landmen's Association of New Orleans (PLANO) and has recently completed a term as President of PLANO. He is currently on the Board of Directors of AAPL and is a 1975 graduate of Tulane University.

# GIEGER, LABORDE & LAPEROUSE, L.L.C.

# SELECT OCS TITLE ISSUES


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*Presented by*

**Andy Adams**

- The Outer Continental Shelf Lands Act (OCSLA) was enacted in 1953. 43 U.S.C. §§ 1331, et seq. OCSLA was enacted to vest the United States with Jurisdiction and control over the natural resources of the OCS.

- OCSLA was part of compromise between coastal states and the United States over ownership and control of the OCS. OCSLA was companion legislation to the Submerged Lands Act which relinquished the right, title and interest of the United States as to the tidelands, which for most states equate 3 geographical miles from the shoreline. 43 U.S.C. § 1301, et seq.

- The… laws… of the United States are hereby extended to the subsoil and seabed of the [OCS] and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purposes of exploring for, developing, or producing resources there from…to the same extent as if the [OCS] were an area of exclusive Federal jurisdiction located within a State….43 U.S.C. § 1331(a)(1).

- To the extent that they are applicable and not inconsistent…with other Federal laws and regulations…, the civil and criminal laws of each adjacent State…are hereby declared to be the law of the United States for that portion of the subsoil and seabed of the [OCS], and artificial islands and fixed structures erected thereon, which would be within the area of the state if its boundaries were extended seaward to the outer margin of the [OCS]….43 U.S.C. § 1331(a)(2)(A).

- A three part test was outlined in Union Texas Petroleum Corp. v PLT Engineering, 895 F.2d 1043 (5th Cir. 1990) to determine if state law was to apply as surrogate federal law under OCSLA.

- The three conditions are: (i) the controversy must arise on the OCS, (ii) federal maritime law must not apply, and (iii) state law must not be inconsistent with federal law.

- The court in Snyder Oil Corp. v. Samedan Oil Corp., 208 F.3d 521 (5th Cir. 2000) was asked to determine the adjacent state to Main Pass Block 261. Snyder wanted Louisiana law to apply and Samedan wanted Alabama law to apply.

- The court rejected Snyder's request to have geographical proximity be determinative for the adjacent states, In an earlier case, Pittencrieff Resources, Inc. v. Firstland Offshore Exploration Co., 942 F. Supp. 271 (E.D. La. 1996), the court relied upon geographic proximity to find Alabama to be the state closest to Main Pass Blocks 253 and 254.

- Instead, the court relied upon four types of evidence to be examined in determining the adjacent states, as first discussed in Reeves v. B&S Welding, Inc., 897 F.2d 178 (5th Cir. 1990). The four types of evidence examined in Reeves were as follows:

  - Geographic proximity;
  - Which coast federal agencies consider the property to be 'off of';
  - Prior court determinations; and
  - Projected boundaries.

- OCSLA provides that "no lease under this subchapter may be sold, exchanged, assigned or otherwise transferred except with approval of the Secretary." 43 U.S.C. § 1337(e).

- BOEMRE approval is required for transfers of record title and operating rights interests in federal offshore leases. 30 CFR § 256.62.

- The federal regulations allow a party "to create or transfer carried working interests, overriding royalty interests, or payments out of production" without requiring BOEMRE approval. 30 CFR § 256.64(a)(7). While approval is not required for such interests, the regulations provide that such instruments must be filed with the BOEMRE "for record purposes." 30 CFR § 256.64(a)(7).

- In World Hospitality, Ltd. v. Shell Offshore Inc., 699 F. Supp. 111 (S.D. Tex 1998), the court held that filing a lien with the MMS did not perfect the lien against an OCS lease under Chapter 56 of the Texas Property Code. However, filing the lien in the real property records of the adjacent Texas counties did perfect such lien.

- In Union Texas Petroleum Corp. v. PLT Engineering, 895 F.2d 1043 (5th Cir. 1990), the court found that a lien arising under the Louisiana Oil Well Lien Act against an OCS lease was properly filed in the official records of the adjacent parish to such lease.

- An instrument involving immovable property shall have effect against third persons only from the time it is filed for registry in the parish where the property is located. La. Civ. Code art. 1839.

- All sales, contracts, and judgments affecting immovable property, which shall not be so recorded, shall be utterly null and void, except between the parties thereto. The recording may be made at any time, but shall only affect third persons from the time of recording, and that the recording shall have affect from the time when the act is deposited in the proper office, and indorsed by the proper officer.

- Additionally, even if a third party has actual knowledge of the contract terms, unless the contract is filed for registry, the contract has no effect on such third party. A third party has no duty to investigate or inquire beyond the public records.

- Texas Property Code 13:001(a): A conveyance of real property or an interest in real property or a mortgage or deed of trust is void as to a creditor or to a subsequent purchaser for valuable consideration without notice unless the instrument has been acknowledged, sworn to, or proved and filed for record as required by law.

- Wallis v. Pan American Petroleum Corp., 383 U.S. 63 (1966), *on remand* McKenna v. Wallis, 366 F.2d 210 (5th Dir. 1966), where the Court held that in the absence of federal law inconsistent with relevant state law, state law governs the relationship between private parties, and the interpretation of their contracts and the resolution of their disputes are decided under state law.

# OCS Title Issues
**PLANO Executive Night Seminar**
**March 3, 2011**

**Adjacent State Law**
**Presented by: Collette R. Gordon, Liskow & Lewis**

## A. OCSLA and the Adjacent State

The law of the adjacent state serves as "surrogate" federal law for many purposes relevant to the ownership of federal offshore leases. The Outer Continental Shelf Lands Act, as amended, 43 U.S.C. §§1331, *et seq*. ("OCSLA") provides:

> To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State, now in effect or hereafter adopted, amended, or repealed are hereby declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

43 U.S.C. § 1333(a)(2)(A).

Notwithstanding the foregoing statutory provision, the President has not determined the "projected lines" extending the state boundaries seaward that would define the areas that would be within the coastal states, including the State of Louisiana, if those boundaries were extended seaward to the outer margin of the OCS.

## B. Relevant Court Decisions

Pursuant to the above-quoted OCSLA provision, courts have conducted OCS adjacency determinations in several reported decisions to decide which coastal State's law would control disputes arising from locations on the OCS.

### 1. *Reeves v. B & S Welding, Inc.*, 897 F.2d 178 (5th Cir. 1990)

The *Reeves* court identified four types of evidence to be considered in determining adjacency:

(i) geographic proximity;
(ii) which coastal State federal agencies consider the subject property to be "off of";
(iii) prior court determinations; and
(iv) projected boundaries.

**2. *Snyder Oil Corp. v. Samedan Oil Corp.*, 208 F.3d 521 (5th Cir. 2000)**

In a subsequent decision, the *Snyder* court explained that the four factors articulated in *Reeves* were not exclusive to determine adjacency, but rather were evidence that should be considered along with that introduced by the parties. The court in *Snyder* considered a variety of evidence and concluded that Mississippi Canyon Area Block 261 was adjacent to the State of Alabama, rather than Louisiana, for purposes of Section 1333(a)(2)(A) of the OCSLA, even though that block was physically closer to Louisiana than to Alabama.

**3. *Union Texas Petroleum v. PLT Engineering, Inc*. 895 F.2d 1043 (5th Cir. 1990)**

Offshore federal lessees contracted with PLT for the design, fabrication and installation of a gas gathering line from Vermilion 237 Platform to a Columbia transmission line. Numerous subcontractors were unpaid by PLT, and subsequently filed liens pursuant to the Louisiana Oil Well Lien Act (La. R.S. 9:4861, *et seq*.) ("LOWLA"), and filed their lines in the mortgage records of Vermilion Parish. Union Texas asserted that maritime law controlled, rather than the law of the adjacent state, and therefore the LOWLA liens did not burden the lease.

The court determined that three conditions must be met for adjacent state law to apply as surrogate federal law under the OCSLA:

(1) The controversy must arise on a situs covered by the OCSLA;
(2) Federal maritime law must not apply of its own force; and
(3) The state law must not be inconsistent with Federal law.

After concluding that these conditions were met in this case, the court rejected the argument of Union Texas that Vermilion Block 237 is on the OCS and not in Vermilion Parish.

> The combination of both OCSLA and Louisiana law extend Vermilion parish beyond the location of the work done here. Louisiana law provides that "the gulfward boundary of all coastal parishes extend coextensively with the gulfward boundary of the State of Louisiana. La. R.S. 49:6. OCSLA adopts this state law and extends the boundaries of Vermilion parish to the outer limits of the OCS…. Thus the liens were actually filed in the parish where the property is located.

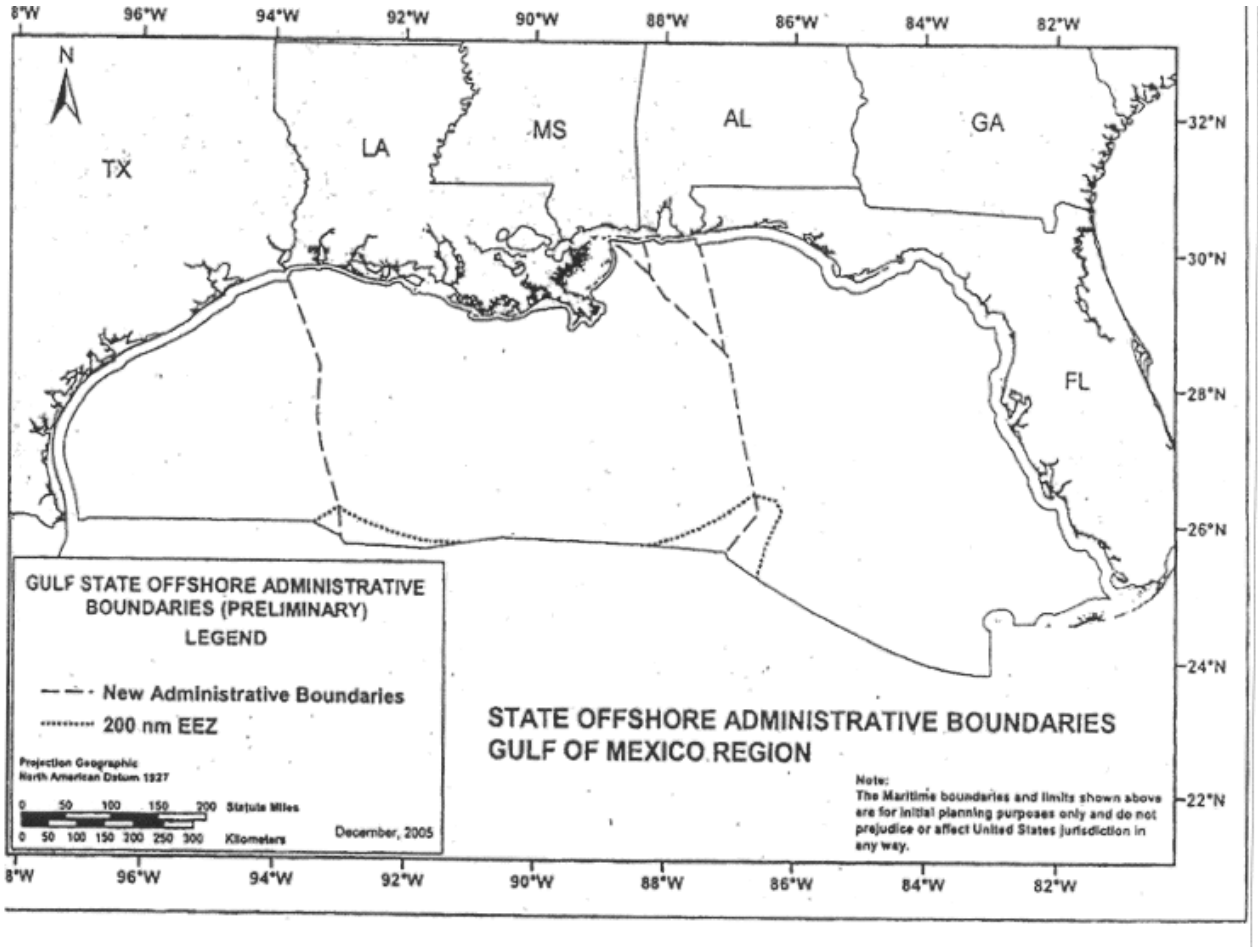
The *Union Texas* case has clear implications for offshore lawyers and landmen. It is the reason that Louisiana parish records should be examined and why leasehold chain of title instruments should be recorded in the parish records.

### C. MMS/BOEMRE Preliminary Projections

Recently, the MMS (the predecessor agency of the BOEMRE) published preliminary projections of state boundaries for each adjoining state to the limits of the OCS for the first time. See 71 Fed. Reg. 127 (January 3, 2006). In setting these "administrative boundaries," the MMS applied the principle of "equidistance" between the adjoining states to project the lines. Although it seems likely that courts in future cases will find MMS's publication of these boundary lines to be influential under the *Reeves* test described above, it is significant that these projected boundary lines were not published by the President pursuant to 43 U.S.C. §1333(a)(2)(A). Moreover, the MMS did not purport to publish these projected boundary lines for purposes of establishing "adjacency" pursuant to 43 U.S.C. §1333(a)(2)(A). Accordingly, although the MMS's projected lines may be considered to be important evidence in determining "adjacency" under 43 U.S.C. §1333(a)(2)(A), those lines are not conclusive of the issue. A copy of the projected lines is attached.

### D. Adjacent Louisiana Parish

If a federal lease is located offshore of the State of Louisiana, under Louisiana law, "[t]he gulfward boundaries of the coastal parishes of the state of Louisiana situated east of the Mississippi River extend from the outer land terminus of their common boundary due east, true bearing" and "the gulfward boundaries of the coastal parishes west of the Mississippi River extend from the outer land terminus of their common boundaries due south, true bearing…." La. R.S. § 49:6. In the *Union Texas Petroleum* case cited above, the United States Court of Appeals for the Fifth Circuit held that the application of this Louisiana statute as "surrogate federal law" extended the boundaries of Vermilion Parish into the federal OCS. Under Louisiana law, a federal OCS lease and any assignments of interests therein should be recorded in the records of the adjacent parish or other appropriate state records (*e.g.*, Uniform Commercial Code filings) in order to put third parties on notice of ownership of that lease. *See, e.g., Union Texas Petroleum v. PLT Engineering*, 895 F.2d 1043 (5th Cir. 1990) (Louisiana Oil Well Lien Act liens filed in mortgage records of Vermilion Parish burdened offshore federal lease); *World Hospitality, Ltd. v. Shell Offshore, Inc.*, 699 F. Supp. 111 (S.D. Tex. 1988) (because Texas law controlled the perfection of liens against federal leases located offshore of Texas, liens filed solely with the MMS were not perfected).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GULF STATE OFFSHORE ADMINISTRATIVE BOUNDARIES (PRELIMINARY)
LEGEND
New Administrative Boundaries
200 nm EEZ
Projection Geographic
North American Datum 1927
0 50 100 150 200 Statute Miles
0 50 100 150 200 250 300 Kilometers
December, 2005
STATE OFFSHORE ADMINISTRATIVE BOUNDARIES
GULF OF MEXICO REGION
Note:
The Maritime boundaries and limits shown above are for initial planning purposes only and do not prejudice or affect United States jurisdiction in any way.

# SELECT OCS TITLE ISSUES

*Presented by*


**Andy Adams**

GEIGER, LABORDE & LAPEROUSE, L.L.C.

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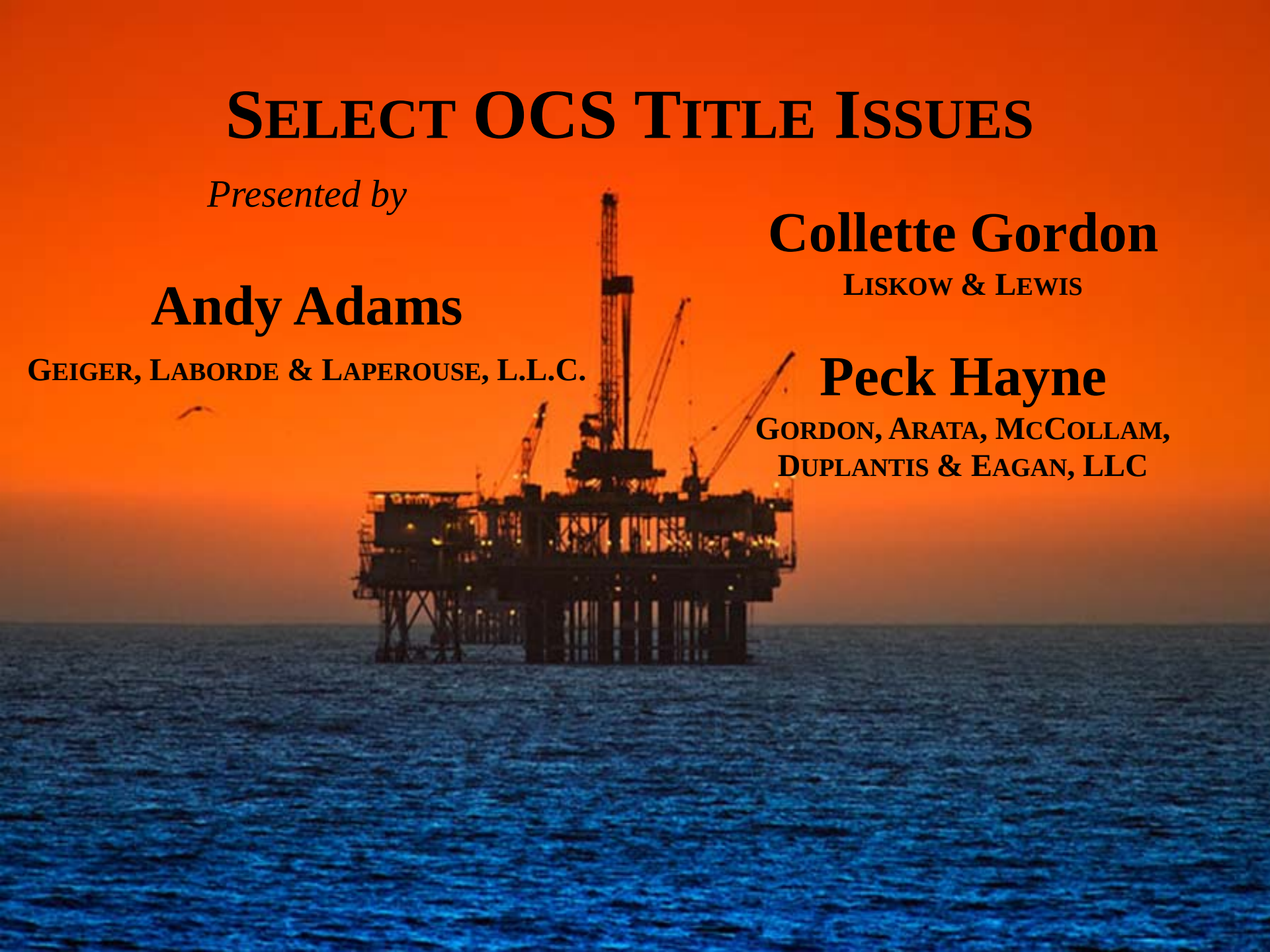


# History and purpose of OCSLA

- The Outer Continental Shelf Lands Act (OCSLA) was enacted in 1953. 43 U.S.C. §§ 1331, *et seq*. OCSLA was enacted to vest the United States with jurisdiction and control over the natural resources of the OCS.

- OCSLA was part of compromise between coastal states and the United States over ownership and control of the OCS. OCSLA was companion legislation to the Submerged Lands Act, which relinquished the right, title and interest of the United States over the tidelands, which for most states extend 3 geographical miles from the shoreline (and, for Texas and Florida, extend 3 leagues, or about 9 miles, from the shoreline). 43 U.S.C. § 1301, *et seq*.

# Jurisdiction and law under OCSLA

- "The … laws … of the United States are extended to the subsoil and seabed of the [OCS] and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purposes of exploring for, developing, or producing resources therefrom … to the same extent as if the [OCS] were an area of exclusive Federal jurisdiction located within a State … ." 43 U.S.C. § 1333(a)(1).

- "To the extent that they are applicable and not inconsistent with … Federal laws and regulations …, the civil and criminal laws of each adjacent State … are hereby declared to be the law of the United States for that portion of the subsoil and seabed of the [OCS], and artificial islands and fixed structures erected thereon, which would be within the area of the state if its boundaries were extended seaward to the outer margin of the [OCS] … ." 43 U.S.C. § 1333(a)(2)(A).

# Governing law for private contracts

- In *Wallis v. Pan American Petroleum Corp.*, 383 U.S. 63 (1966), *on remand*, *McKenna v. Wallis*, 366 F.2d 210 (5th Cir. 1966), the Court held that, in the absence of federal law inconsistent with relevant state law, state law governs the relationship between private parties, and the interpretation of their contracts and the resolution of their disputes are decided under state law.

So when exactly does state law apply as surrogate federal law?

# SELECT OCS TITLE ISSUES

- A three-part test was outlined in *Union Texas Petroleum Corp. v PLT Engineering*, 895 F.2d 1043 (5th Cir. 1990), to determine if state law is to apply as surrogate federal law under OCSLA.

- The three conditions must be met: (i) the controversy must arise on the OCS, (ii) federal maritime law must not apply, and (iii) state law must not be inconsistent with federal law.

- After determining that these three conditions were met, the court rejected the lessees' argument that, under Louisiana's public-records law, Louisiana's Oil Well Lien Act did not apply to leases on the OCS because a lien affidavit could not be filed "within" the parish where the lease was located:

> The combination of both OCSLA and Louisiana law extend Vermilion parish beyond the location of the work done here. Louisiana law provides that "the gulfward boundary of all coastal parishes extend coextensively with the gulfward boundary of the State of Louisiana." La. R.S. 49:6. OCSLA adopts this state law and extends the boundaries of Vermilion parish to the outer limits of the OCS … . Thus the liens were actually filed in the parish where the property is located.

# Which state's law applies?

- The court in *Snyder Oil Corp. v. Samedan Oil Corp.*, 208 F.3d 521 (5th Cir. 2000), was asked to determine the adjacent state to Main Pass Block 261. Snyder wanted Louisiana law to apply, and Samedan wanted Alabama law to apply.

- The court rejected Snyder's request to have geographical proximity be determinative for the adjacent states. In an earlier case, *Pittencrieff Resources, Inc. v. Firstland Offshore Exploration Co.*, 942 F. Supp. 271 (E.D. La. 1996), the court relied upon geographic proximity to find Alabama to be the state closest to Main Pass Blocks 253 and 254.

## SELECT OCS TITLE ISSUES

- Instead, the court in *Snyder Oil* relied upon four types of evidence to be examined in determining the adjacent states, as first discussed in *Reeves v. B&S Welding, Inc.*, 897 F.2d 178 (5th Cir. 1990). The four types of evidence examined in *Reeves* were as follows:

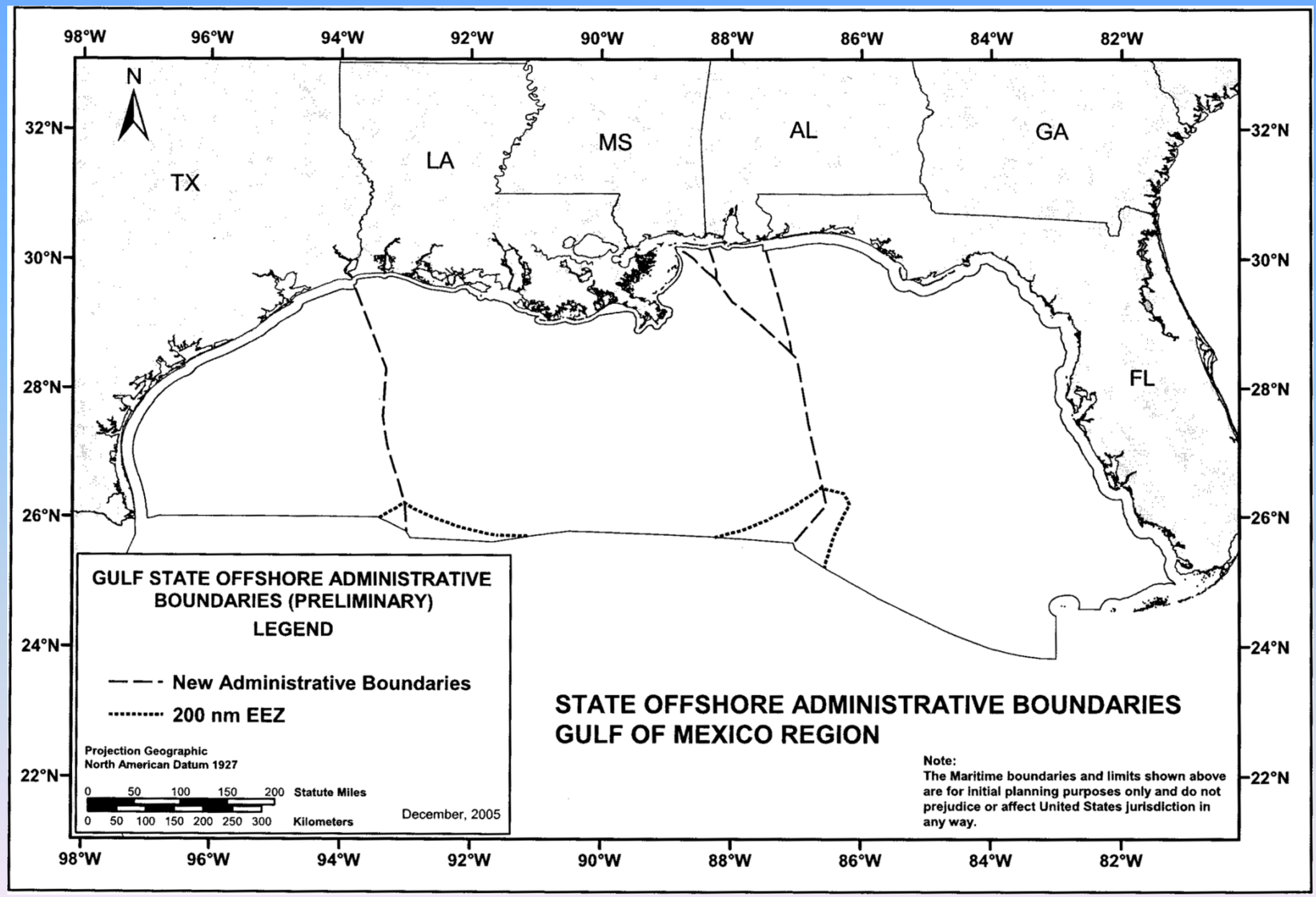
  - Geographic proximity;
  - Which coast federal agencies consider the property to be 'off of';
  - Prior court determinations; and
  - Projected boundaries.

# MMS/BOEMRE preliminary projections

- In 2006, the MMS (now BOEMRE) published for the first time preliminary projections of state boundaries for each adjoining state to the limits of the OCS. *See* 71 Fed. Reg. 127 (Jan. 3, 2006). In setting these "administrative boundaries," the MMS applied the principle of "equidistance" between the adjoining states to project the lines.

- Although courts in future cases will likely find the publication of these boundary lines to be influential under the *Reeves* test, it is significant that these projected boundary lines were not published by the President under 43 U.S.C. § 1333(a)(2)(A). Moreover, the MMS did not purport to publish these projected boundary lines for establishing "adjacency" under 43 U.S.C. § 1333(a)(2)(A). Thus, although the MMS's projected lines may be considered to be important evidence in determining "adjacency" under 43 U.S.C. § 1333(a)(2)(A), those lines are not conclusive of the issue.

# SELECT OCS TITLE ISSUES



# Where should instruments be filed?

- In *World Hospitality, Ltd. v. Shell Offshore Inc.*, 699 F. Supp. 111 (S.D. Tex 1998), the court held that filing a lien affidavit with the MMS did not perfect the lien against an OCS lease under Chapter 56 of the Texas Property Code. But filing a lien affidavit in the real property records of the adjacent Texas counties did perfect the lien.

- In *Union Texas Petroleum Corp. v. PLT Engineering*, 895 F.2d 1043 (5th Cir. 1990), the court held that a privilege (lien) arising under the Louisiana Oil Well Lien Act against an OCS lease was effective where the lien affidavit was filed both with the MMS and in the official records of the parish adjacent to such lease.

- These two cases lead to the unresolved question whether it is sufficient to file a title instrument solely in the state office required under state law or whether a filing must also be made with the BOEMRE. [***Of course, the safest course is always to file instruments affecting title in both locations***.]

# What *must* be filed the BOEMRE?

- OCSLA provides that "no lease under this subchapter may be sold, exchanged, assigned or otherwise transferred except with approval of the Secretary." 43 U.S.C. § 1337(e).

- BOEMRE approval is required for transfers of record title and operating rights interests in federal offshore leases. 30 CFR §§ 256.62, 256.64(a).

- The federal regulations allow a party to "create or transfer carried working interests, overriding royalty interests, or payments out of production without obtaining [BOEMRE] approval." 30 CFR § 256.64(a)(7). While approval is not required for such interests, the regulations provide that such instruments must be filed with the BOEMRE "for record purposes." 30 CFR § 256.64(a)(7). These are filed in what is perhaps inaptly called the "non-required" files for the lease at issue.

# What else *may* be filed with the BOEMRE?

- Other instruments affecting title to offshore property are not specifically enumerated in the BOEMRE regulations, but are routinely filed in these same "non-required" files. Examples of these other groups of instruments include:

  - Mortgages and deeds of trust (and release instruments for same)
  - UCC-1 financing statements (and UCC-3 amendments)
  - Judgments
  - Lien (privilege) affidavits
  - Wellbore assignments (and other assignments that do not meet the BOEMRE requirements for approval of assignments of record title or operating rights)
  - Joint operating agreements (or memorandums of same)
  - Other contracts affecting title to or operations for an offshore lease.

# Texas public-records law

- Texas Property Code 13:001(a): A conveyance of real property or an interest in real property or a mortgage or deed of trust is void as to a creditor or to a subsequent purchaser for valuable consideration without notice unless the instrument has been acknowledged, sworn to, or proved and filed for record as required by law.

# Louisiana public-records law

- "An instrument involving immovable property shall have effect against third persons only from the time it is filed for registry in the parish where the property is located." La. Civ. Code art. 1839.

- All sales, contracts, and judgments affecting immovable property, which shall not be so recorded, shall be utterly null and void, except between the parties thereto. The recording may be made at any time, but shall affect third persons only from the time of recording, and the recording shall have effect from the time when the act is deposited in the proper office, and indorsed by the proper officer.

- Additionally, even if a third party has actual knowledge of the contract terms, unless the contract is filed for registry, the contract has no effect on such third party. A third party has no duty to investigate or inquire beyond the public records.

# What is the adjacent Louisiana parish?

- Under Louisiana law, "[t]he gulfward boundaries of the coastal parishes of the state of Louisiana situated east of the Mississippi River extend from the outer land terminus of their common boundary due east, true bearing" and "the gulfward boundaries of the coastal parishes west of the Mississippi River extend from the outer land terminus of their common boundaries due south, true bearing…." La. R.S. 49:6.

- Thus, applying the *Union Texas* case, lien affidavits (and other encumbrances, such as conventional/contractual mortgages or deeds of trust, UCC financing statements, and judgments creating judicial mortgages) should be filed in both the BOEMRE "non-required" lease file records and the appropriate records of the projected "adjacent" parish (or parishes).

# Division of record title and operating rights

- The BOEMRE recognizes two types of interests by which full leasehold rights of an offshore lease may be divided within a lease block:
  - record title (which always applies to all depths and may be divided only into "aliquots," which are 1/64th of a lease block); and
  - operating rights (which applies to specified depths within one or more aliquots for a lease block).

- The BOEMRE does not recognize an assignment of record title or operating rights that contains an exception in the property description. For example, the BOEMRE will not approve an assignment of 100% record title for the entire block less and except the S/2 NE/4 NE/4 of the block.

- The BOEMRE likewise does not recognize an assignment of record title or operating rights for leasehold rights with respect to a single wellbore.

# Operating rights

- For several years, the BOEMRE (formerly MMS) has refused to allow more than a single depth severance for severing operating rights within any single specified geographical area). Thus, at the current time, it is permissible to create only a set of "shallow" operating rights and corresponding "deep" operating rights.
  - The dividing boundary between the shallow and deep operating rights is to be specified by reference to *either* a true vertical depth from the surface *or* a measured depth within a specified wellbore.
  - The MMS has formerly allowed two sets of vertical dividing boundaries so that it was once possible to sever operating rights for a single specified sand or group of sands within a single defined interval (*e.g.*, from the stratigraphic equivalent of the top of the ABC sand as seen at a measured depth of 5,000 feet in the OCS-G 1234 No. 1 well (API # 170117010000) down to the stratigraphic equivalent of a measured depth of 8,000 feet in that same well. *But not any more*.

# SELECT OCS TITLE ISSUES

- This policy to allow only a single dividing boundary for operating rights and thus in effect only "deep" and "shallow" operating rights frequently leads to title issues between parties, particularly in farmout scenarios.

  - For example, the operating rights for a lease have been severed from the surface down to 12,000 feet TVD and are held by ABC Company, which grants a farmout agreement to XYZ Company. Under the farmout agreement, XYZ Company has the right to drill a well within the SE/4 of the lease block down to 10,000 feet and has the right to earn all operating rights in the SE/4 of the block from the surface down to 100 feet below the deepest depth penetrated by a successful earning well. XYZ Company drills a successful well down to 9,876 feet.
  - The BOEMRE will not approve three sets of operating rights within the same geographical area (viz., from the surface down to 9,876 feet; from that depth down to 12,000 feet; and all depths below 12,000 feet).

# SELECT OCS TITLE ISSUES

- If the farmee is to receive an assignment of operating rights in a form that will be approved by the BOEMRE under its current policy, then the assignment form (Form MMS-151) would need to grant operating rights to the farmee from the surface down to 12,000 feet TVD (not just to 100 feet below 9,876 feet).
  - To cover their contractual rights as to the vertical gap from 9,976 feet and 12,000 feet, the parties could provide in Exhibit A to their assignment form that, notwithstanding this assignment, the parties contractually agree between themselves that the farmee has no rights in and is entitled to no production produced from the depths within this gap.
- But frequently, the farmor does not want its title of record to be at risk and thus the farmee will not receive an assignment of operating rights in a form that will be approved by the BOEMRE under its current policy. Nonetheless, the farmee should still seek an assignment, which it can then file in the BOEMRE "non-required" files for the lease and also in the appropriate adjacent parish's conveyance records.

# Royalty relief

- Under the Outer Continental Shelf Deep Water Royalty Relief Act of 1995, Congress granted full royalty relief on the first volumes produced from "deep water" leases granted during the five-year period 1996 to 2000. The volumes subject to this royalty relief range from 17.5 million barrels of oil equivalent (MMBOE) for leases in water depths of 200 to 400 meters to 87.5 MMBOE for leases in water depths greater than 800 meters.
  - In *Santa Fe Snyder v. Norton*, 385 F.3d 884 (5th Cir. 2004), the Fifth Circuit held that the royalty-suspension volumes for these leases were to be computed on a lease-by-lease basis (not on a cumulative, field-wide basis) and irrespective whether the field had production before this 1995 statute was enacted. Thus, if two ultradeep leases contributed to a unit, then each lease would be entitled to royalty relief on the first 87.5 MMBOE allocated to that lease—for a total of 175 MMBOE royalty-free.
  - In *Kerr-McGee Oil & Gas Corp. v. U.S. Dep't of Interior*, 554 F.3d 1082 (5th Cir. 2009), the Fifth Circuit held that royalty suspension applied to ***all*** deep-water leases granted during 1996-2000 and thus struck down MMS regulations and lease provisions that purported to suspend this royalty relief whenever commodity prices exceeded specified price thresholds.

# SELECT OCS TITLE ISSUES

- Royalty relief is also available in certain other circumstances. *See* NTL 2010-N03.
  - For gas production from ultra-deep wells (at least 20,000' TVD SS) in shallow waters or from deep wells (at least 15,000' TVD SS) not subject to royalty relief. *See* 42 U.S.C. §§ 15904-15905; 30 CFR § 203.1(d).
  - For an end-of-life lease with additional production that would not be produced without a reduction in royalty. *See* 30 CFR §§ 203.50-203.56.
  - For "new production" from deep-water leases granted before 1996 or after 2000, where such new production would not "be economic in the absence of" this royalty-relief. *See* 30 CFR §§ 203.60-203.79.
  - For any leases where the lessee can other show that additional production would not be recovered without royalty relief. *See* 30 CFR § 203.80.

- Royalty relief under these categories may be subject to suspension when commodity prices exceed specified thresholds.

# Overriding royalties

- When production from a lease is subject to royalty relief under any of these mandatory or discretionary provisions and the lease is also burdened by an overriding royalty interest, then a related question arises whether the overriding royalty is payable on the same production.
- The answer may turn on the language used in the specific assignment at issue creating the overriding royalty interest. Examples include:
  - Some assignments are silent how the override is to be computed or paid.
  - Some assignments detail how the override is to be computed and paid (with no reference to how royalty or other payments may be computed or paid).
  - Some assignments tie computation or payment of the override to computation or payment of the lessor's royalty.
  - Some assignments expressly provide that the override is payable even when the lessor's royalty may be subject to suspension for royalty relief.

# SELECT OCS TITLE ISSUES

- In *TOTAL E&P USA, INC. v. Kerr-McGee Oil & Gas Corp.*, 2010 WL 5207591 (E.D. La. Dec. 14, 2010), the court granted summary judgment holding that overriding royalties were not payable on the first 87.5 MMBOE of production attributable to a deep water lease issued in 1998 (OCS-G 20082 covering Green Canyon 640).
  - Both assignments provided that the overriding royalties "shall be calculated and paid in the same manner and subject to the same terms and conditions as the landowner's royalty under the Lease."
  - Neither assignment contained any provision that the overriding royalty would be payable irrespective of any royalty relief for payment of the lessor's royalty.
- The defendants have appealed to the Fifth Circuit.

# WHAT TO DO WITH THE LEFTOVERS?

## OWNERSHIP ISSUES ASSOCIATED WITH ABANDONED PLATFORMS, WELLS, AND UNITS

***The Legal Issues***

# I. TAKE ONE TAKE ALL

- Operator takes on liability for all wells in the unit if the well is unitized **or** all wells on the lease if the production is on a lease basis.
- All plugging and abandonment liability and liability for cleanup and restoration of the property for all wells.
- Find out what is out there before you begin!

# II. DISSOLVING UNITS

- Statewide Order 29-L-3. Title 43, Part XIX, Subpart 1

- Must show:
  - Period of 15 months has elapsed without:
    i) Production from the pool
    ii) No well proven capable of producing from the pool exists; and
    iii) No operations conducted in attempt to restore production from the pool
- Must provide documentation to support this position; statement not satisfactory

- La. R.S 30:9.1 says that where a unit has been terminated the operator of the well shall be entitled to a hearing on a new proposed unit as if the old unit “never existed” and shall be allowed to make its case for what it believes the boundaries of the new unit should be.

- However . . .

- Section 3105(A)(4) of Statewide Order 29-L-3:

  "In the event that production from the pool is subsequently reestablished from an existing well which was deemed not capable of producing from the pool as of the effective date of unit termination, the operator of record of such well shall immediately apply to the commissioner for a public hearing, after 30-day legal notice, to consider evidence concerning whether the previously existing unit on which the well is located should be reestablished for such well."

- To DNR this provision means that if production occurs from pool previously covered by a unit, the previous unit will “spring back to life” as it was before.
- Nothing to be gained from terminating unit in spite of La. R.S. 30:9.1’s statement to the contrary
- In fact, even if you could terminate the unit permanently, you may not want to because of DNR’s “take one take all” policy

# III. La. R.S. 30:10—The "Risk Fee" Statute

- Provides protection to the unit operator for the money it will spend or has spent in drilling/reworking the well.

- Applies in the absence of an operating agreement contract between the lessees and/or unleased interest owners in the unit


Moxy Prospect
Land Plat
Sabine Parish, Louisiana
February 25, 2011
N
W
E
S
LEGEND
Leasehold
Competitor Leasehold
Units
CV SUA
CV SUB
CV SUC
Well Status
Dry and Plugged
Orphan Well
0
125
250
500
Feet
MOXY
OIL & GAS
T24N-R5W
Terry Well No.1
Smith; Well No.1
Smith Well No.3
Mike Smith, et al
CV SUA; No.1
JW Anderson, et al
CV SUA
CV SUB
CV SUC
Wayne Smith, et al
24
Jim Sams, et al
J Sams; Well No.1
TC Land, LLC
J Sams; Well No.2
25
J Sams; Well No.3
13-A
13-B
13-C
13-D
13-E
14-A-1
14-B
14-C

- To be protected must send out a “risk fee” letter to all other lessees or owners of unleased interests in the unit

- Letter must be sent certified mail and must include:
    1. An estimate of the cost of drilling, testing, completing and equipping the unit well
    2. The proposed location of the unit well
    3. The proposed objective depth of the unit well
    4. All logs, core analysis, production data and well test data from the unit well which has not been made public

- The lessee or unleased interest owner has 30 days to respond notifying the operator of his intention to participate.

- No response received within 30 days from receipt is considered an election not to participate

- Election not to participate or an election to participate and then a failure to pay allows the operator to recover out of production:

**From Mineral Lessees**:

- "actual reasonable expenditures incurred in drilling, testing, completing, equipping, and operating the unit well,

AND

- A risk charge of 200% of the cost of drilling, testing, and completing the unit well

**From Unleased Mineral Owners**

- 200% risk charge is inapplicable
- Can only recover the reasonable actual drilling expenses

- No requirement that “risk fee” letter be sent before operations conducted
- If no risk fee letter, operator only gets to deduct reasonable actual drilling expenses
- “Risk fee” letter is valid for 90 days.

- *Query*: Does La. R.S. 30:10 apply only to the initial drilling of a well or to any operations intending to establish production?

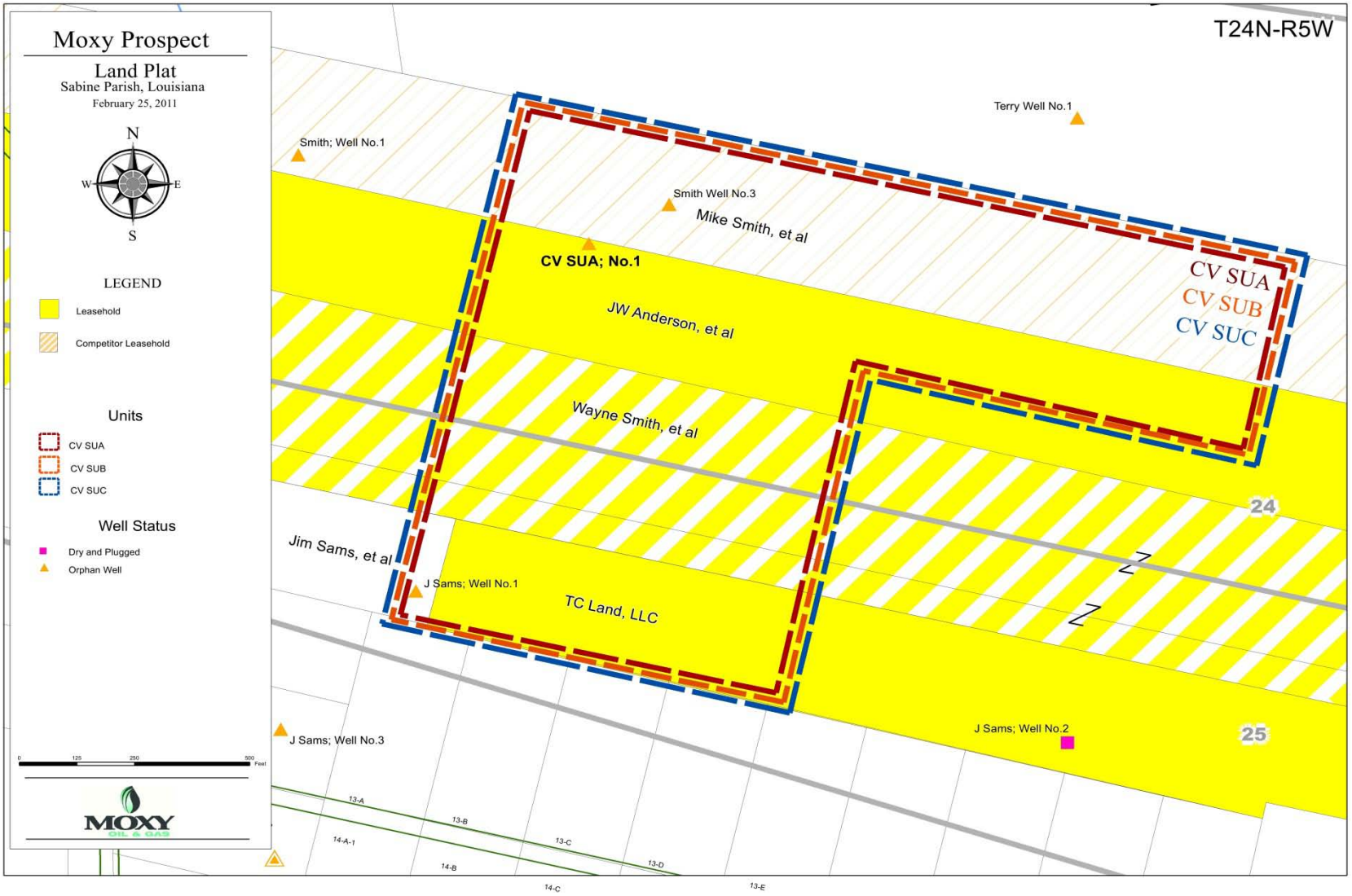
    - Statute only mentions “drilling or intending to drill” a well

    - *Enerquest Oil and Gas, LLC v. Asprodites*, 843 So.2d 535 (La.App. 1 Cir. 2003)

“Reworking the existing wells presented a viable means of rescuing the wells from being plugged, which in turn would require the drilling of new wells—the end result being higher, unnecessary costs for the other interested owners. The evidence regarding the reworking of the wells presented an economically prudent option of resurrecting the wells to a producing status.”

*Enerquest*, 843 So.2d at 540

# IV. UNIT WELLS ON OTHER LEASES



- *Query*: Your client wants to become operator of the unit (and conduct drilling operations), but the unit well is located on property over which you do not have a lease. Can he?
  - Yes. La. R.S. 30:28 provides that "issuance of the permit [to drill] is sufficient authorization to the holder of the permit to enter upon the property covered by the permit and to drill in search of minerals thereon.
  - In the case of a unit well, the "property covered by the permit" is all property within unit boundary
  - *Nunez v. Wainoco Oil & Gas Company*, 488 So.2d 955 (La. 1986), held that where the Commisioner creates a drilling unit, concepts of individual ownership of property are superseded.

- *Query*: Your client wants to conduct to seismic or other geologic survey operations over the property in the unit. Do La. R.S. 30:28 and *Nunez* allow him to do so without obtaining special permission?
    - No. La. R.S. 30:217 requires the consent of the surface owner before entering the land of adjacent lessee or unleased owner, regardless of unitization.
    - Consent from mineral owner or mineral lessee unnecessary

# V. SALT WATER DISPOSAL WELLS

- *Query*: Your client wants to use a SWD well on an adjacent property in the unit. Do La. R.S. 30:28 and *Nunez* allow him to do so without obtaining special permission?
  - SWD wells are not wells for the exploration of minerals, so neither the mineral lessee nor the mineral owner has any right to allow SWD well on property
  - That also means they do not have power to prevent a SWD well on their property
  - Right to allow SWD wells belongs to the surface owner
    - Surface owner must exercise this right so as not to interfere with correlative rights of mineral owner/lessee. *See* La. R.S. 31:11.

# The Left Over's:
# From a Land Perspective

# Lease Take Off For Prospect With Re-entry of Well

- Determine well/production info
- Verify leasehold status
- Report findings
  - Area check plat
  - Note orphan wells
  - Note third party primary term lease
- Discuss options
  - Is taking over the orphan well worth the risk?

# Leasing

- Prepare well/production history
- Run title
- Make lease offer to landowners
  - Win-Win Scenario
    - Free lease/P&A, surface restoration


Moxy Prospect
Land Plat
Sabine Parish, Louisiana
February 25, 2011
N
W
E
S
LEGEND
Leasehold
Competitor Leasehold
Units
CV SUA
CV SUB
CV SUC
Well Status
Dry and Plugged
Orphan Well
MOXY
OIL & GAS
T24N-R5W
Terry Well No.1
Smith; Well No.1
Smith Well No.3
Mike Smith, et al
CV SUA; No.1
JW Anderson, et al
CV SUA
CV SUB
CV SUC
Wayne Smith, et al
24
Jim Sams, et al
J Sams; Well No.1
TC Land, LLC
J Sams; Well No.3
J Sams; Well No.2
25
13-A
13-B
13-C
13-D
14-A-1
14-B

# Title Research to Re-enter Orphan Well

- Patent Forward Abstract
- Corresponding Mineral History
- Wellbore Ownership Research
  - Prepare Affidavit
    - In absence of wellbore ownership in records rely on working interest ownership
    - Verify ownership matches DNR records
- Interested Parties List for 30:10 Letters
  - Same criteria for new well
    - Surface, Mineral, Royalty, and Working Interest within unit and ¼ mile halo

# Regulatory

- Take Over Well Operatorship
  - Pink card application
    - No special requirements if already registered as operator
    - Affidavit of lease ownership (No title opinion required)
    - Signature of previous operator not necessary
    - Survey plat
      - Well name must match DNR  orphan well name
      - Can change well name later by amending permit
- Take over unit operatorship
  - Same process as taking over any inactive unit

# Moxy Prospect

## Area Check Plat

Sabine Parish, Louisiana

February 25, 2011

T24N-R5W

N

W E

S

LEGEND

- Area of Interest
- Smith Production, Inc.

Well Status

- Dry and Plugged
- Orphan Well

Smith; Well No.1

Terry Well No.1

Smith Well No.3

Mike Smith, et al

**CV SUA; No.1**

JW Anderson, et al

Wayne Smith, et al

Jim Sams, et al

J Sams; Well No.1

TC Land, LLC

J Sams; Well No.3

J Sams; Well No.2

24

25

13-A

13-B

13-C

13-D

14-A-1

14-B

0 125 250 500 Feet

MOXY OIL & GAS

# Moxy Prospect

## Land Plat

Sabine Parish, Louisiana

February 25, 2011

N

W E

S

LEGEND

- Leasehold
- Competitor Leasehold

Units

- CV SUA
- CV SUB
- CV SUC

Well Status

- Dry and Plugged
- Orphan Well

0 125 250 500 Feet

MOXY OIL & GAS

T24N-R5W

Smith; Well No.1

Terry Well No.1

Smith Well No.3

Mike Smith, et al

CV SUA; No.1

CV SUA

CV SUB

CV SUC

JW Anderson, et al

Wayne Smith, et al

24

Jim Sams, et al

J Sams; Well No.1

TC Land, LLC

J Sams; Well No.2

25

J Sams; Well No.3

13-A

13-B

13-C

13-D

14-A-1

14-B

# MMS → BOEMRE Transformation

## Current Organization & Status of Regulatory Reforms on the OCS

# Major Topics

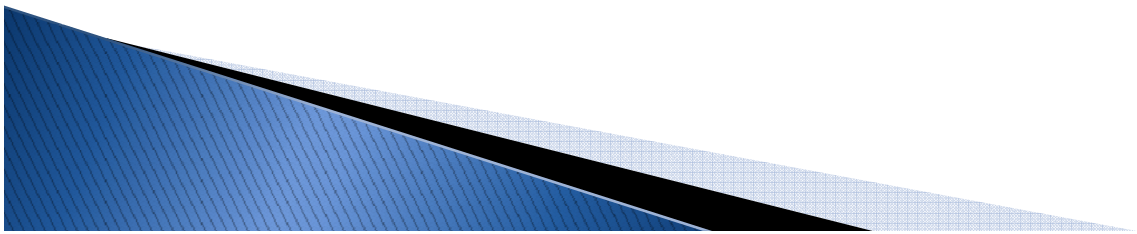
- Historical Perspective
- Agency Transformation
- Status & Impact of Regulatory Reforms
  - Irrational & Illogical Policy
  - Impact on Permitting
  - Impact on Operations
  - Deepwater Well Containment
  - Impact on Jobs
- Future of OCS
  - Agency – Industry Dependency
  - Potential Winners & Losers

# Disclaimer

- *Views provided are personal and have no association with that of Stone Energy or the Offshore Operators Committee.*

# Historical Perspective

- *Offshore Production, National Security & America's Need for a Comprehensive Energy Policy to Bridge the Future.*



# Historical Review

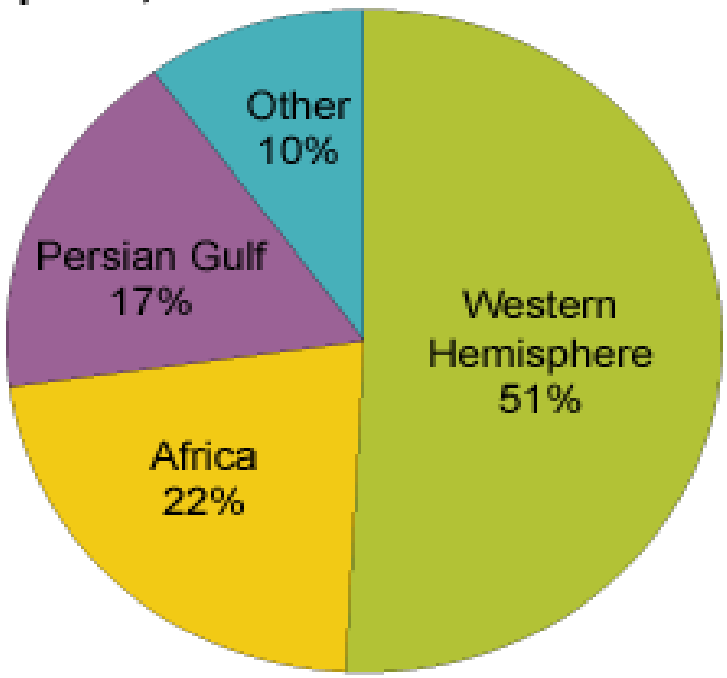
- $V_J$ Day ➔ End of WW-II 2-Sept-1945
- Exploration on Federal OCS 1947
- Floating Drilling Operations 1962
- Santa Barbara Blowout 28-Jan-1969
  - Genesis of NEPA
  - Regulatory Reforms
- MMS Established 19-Jan-1982
- Macondo Blowout 20-April-2010
- BOEMRE Established 19-May-2010

# WW-II Victory; Security & Energy

- Allied Forces Consumption
  - 7 Billion Barrels
- American Oil Supplied
  - 6 Billion Barrels (85.7%)
- Victory!
  - *Joint Chiefs of Staff's Army-Navy Board: "at no time did the Services lack for oil in the proper quantities, in the proper kinds and at the proper places."*

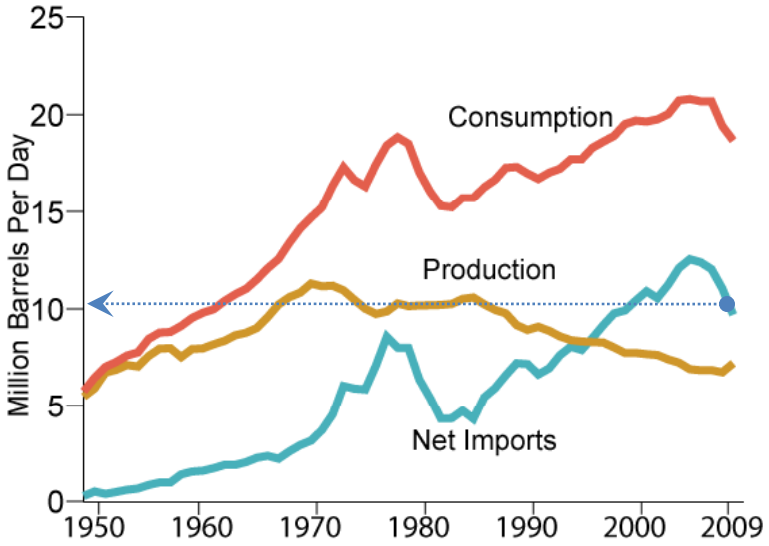
# US Oil Consumption & Dependence

**Sources of U.S. Net Petroleum Imports, 2009**




Source: U.S. Energy Information Administration, *Petroleum Supply Annual 2009*.

**Consumption, Production, and Import Trends (1949-2009)**




Source: U.S. Energy Information Administration, *Annual Energy Review 2009*, Table 5.1 (August 2010).

~1.7 MMBO/Day from Mideast

Mideast Military Costs (I-A-P)

$ 145 Billion in 2009

~$ 165 Billion in 2010 & 2011

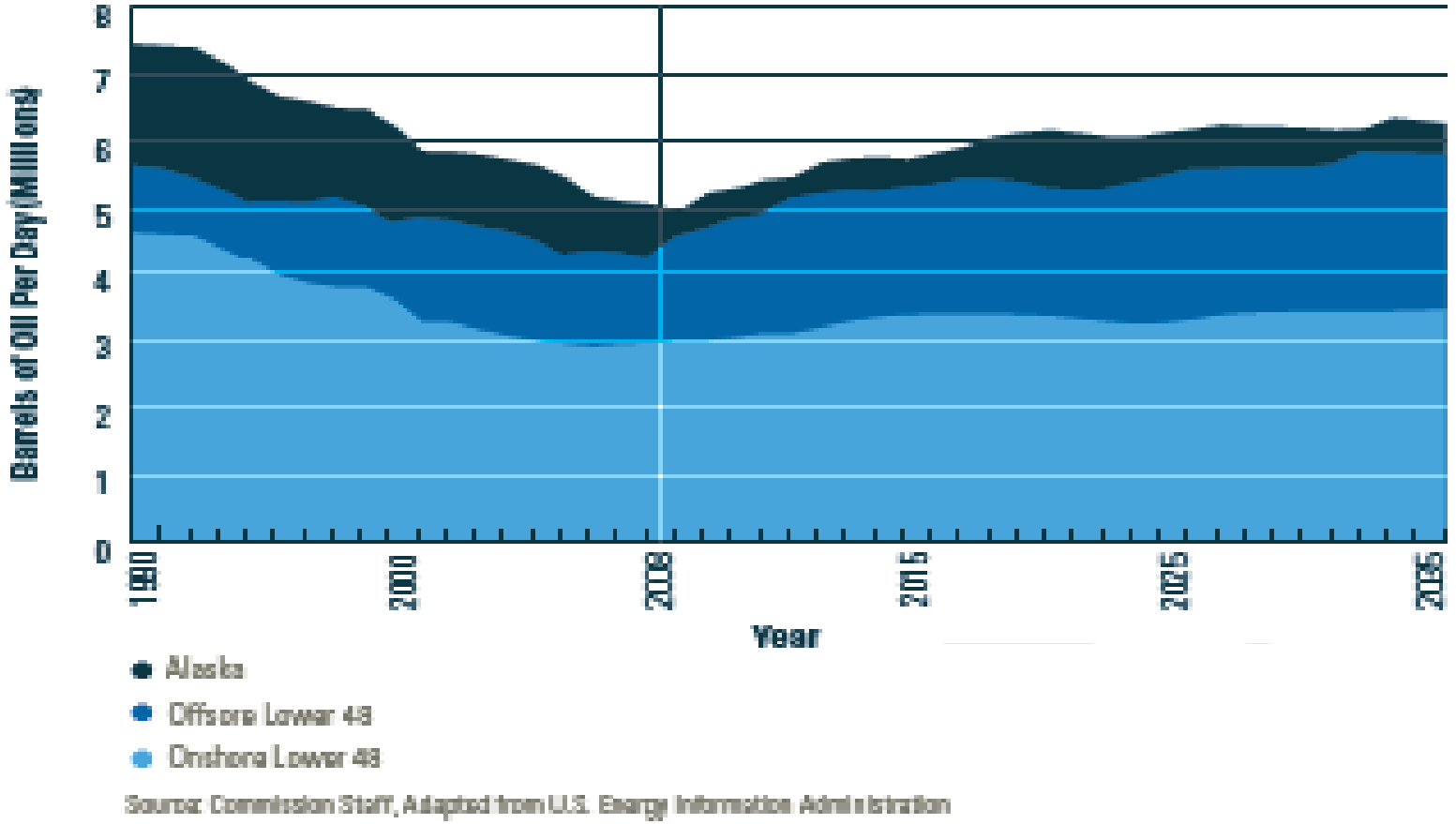
**Mideast Military Cost = $ 233/bbl**

**~ 18.7 MMBO/Day**

# US Production Wedge

## National Commission Report

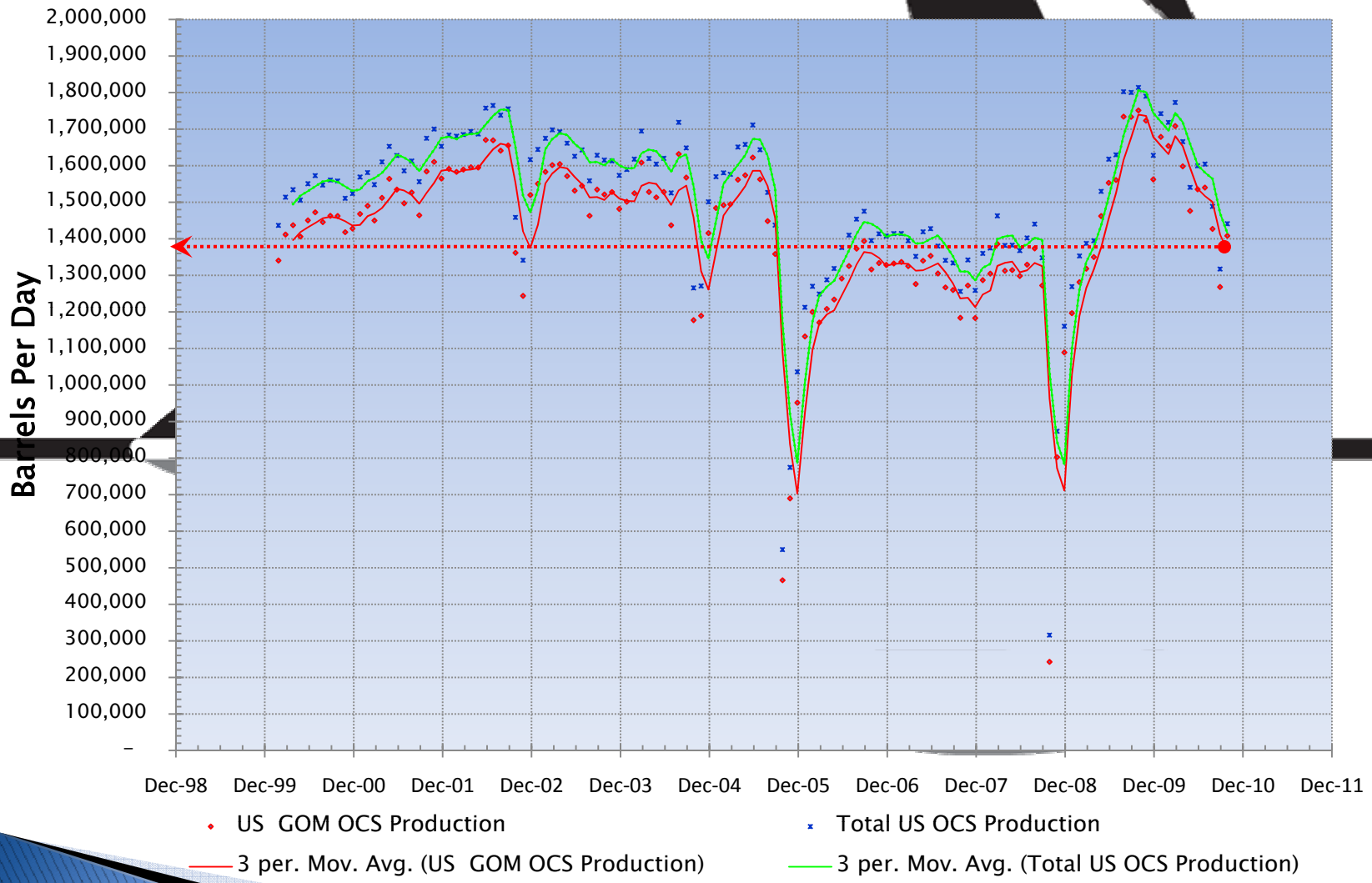
FIGURE 2.6: U.S. Crude Oil Production, 1950-2035 (projected)




Source: Commission Staff, Adapted from U.S. Energy Information Administration

As this chart makes clear, overall production of crude oil in the U.S. has been declining for decades. However, production from deepwater wells in the Gulf of Mexico (Offshore Lower 48) is on the rise.

# US GOM .vs. Total OCS Production



# MMS Transformation

- *From Service to Silos*

*Will Government Agency Interaction Foster Sustainable Growth?*

# MMS – An Agency of Optimism

## Technological Advances

MMS keeps pace with today's technology to ensure oil and gas production is conducted in a safe and environmentally sound manner. Some of MMS's recent regulatory advancements led to the OmniMAX anchor, which has a 360 degree loading capability; the use of pre-set polyester moorings for deepwater drilling rigs; improvements to a mooring system for floating production systems; and an emphasis on various forms of subsea boosting, including pump systems that allow enhanced hydrocarbon resource recovery.

## Audits and Compliance

In Fiscal Years 2005-2007, MMS completed 1,080 audits and, through the audit process, collected an additional $231.3 million as well as $4,484,100 in civil penalties. Also during this period, MMS conducted 5,126 compliance reviews and collected $141.9 million through this review process.

For the past five years, as part of its annual independent review, MMS consistently has received highly favorable audit opinions from professional auditing organizations.

## Renewable Energy Program

With the passage of the Energy Policy Act of 2005, MMS was given authority to develop renewable energy projects such as wave, wind and current energy on the OCS.

Through this new program, MMS will grant leases, easements and rights-of-way for orderly, safe and environmentally responsible renewable energy project activities and alternate uses of existing facilities on the OCS.

## The History of MMS

The Minerals Management Service (MMS) was created on January 19, 1982, underscoring the importance of the offshore oil and gas industry to our Nation's energy future. Its creation came nearly 30 years after two milestone Acts were passed by Congress – the Submerged Lands Act and the Outer Continental Shelf Lands Act – and 28 years after the first OCS lease sale was held.

MMS has become our Nation's leader in offshore energy development and the collection of royalties on behalf of the American Public.

MMS employs world-class biologists, physicists, geologists and engineers. If you want to join this dynamic organization, please visit www.mms.gov

U.S Department of the Interior
Minerals Management Service
Office of Public Affairs
1849 C Street NW
Washington, D.C. 20240

## The Minerals Management Service

**People Promoting Energy, the Economy, and the Environment**

## *Assistant Secretary For Land & Minerals Management*

Wilma Lewis

## *Assistant Secretary For Planning, Management & Budget*

Rhea S. Suh

Director Bromwich

### BOEM

- Resource Evaluation
- Planning; 5-yr Process
- Process & Approve Leasing Activity

### BSEE

- Comprehensive Oversight
- Safety
- Environmental Protection
- Creation of Standards

### ONRR

- Revenue Collection
- Revenue Distribution
- Auditing & Compliance
- Asset Management.

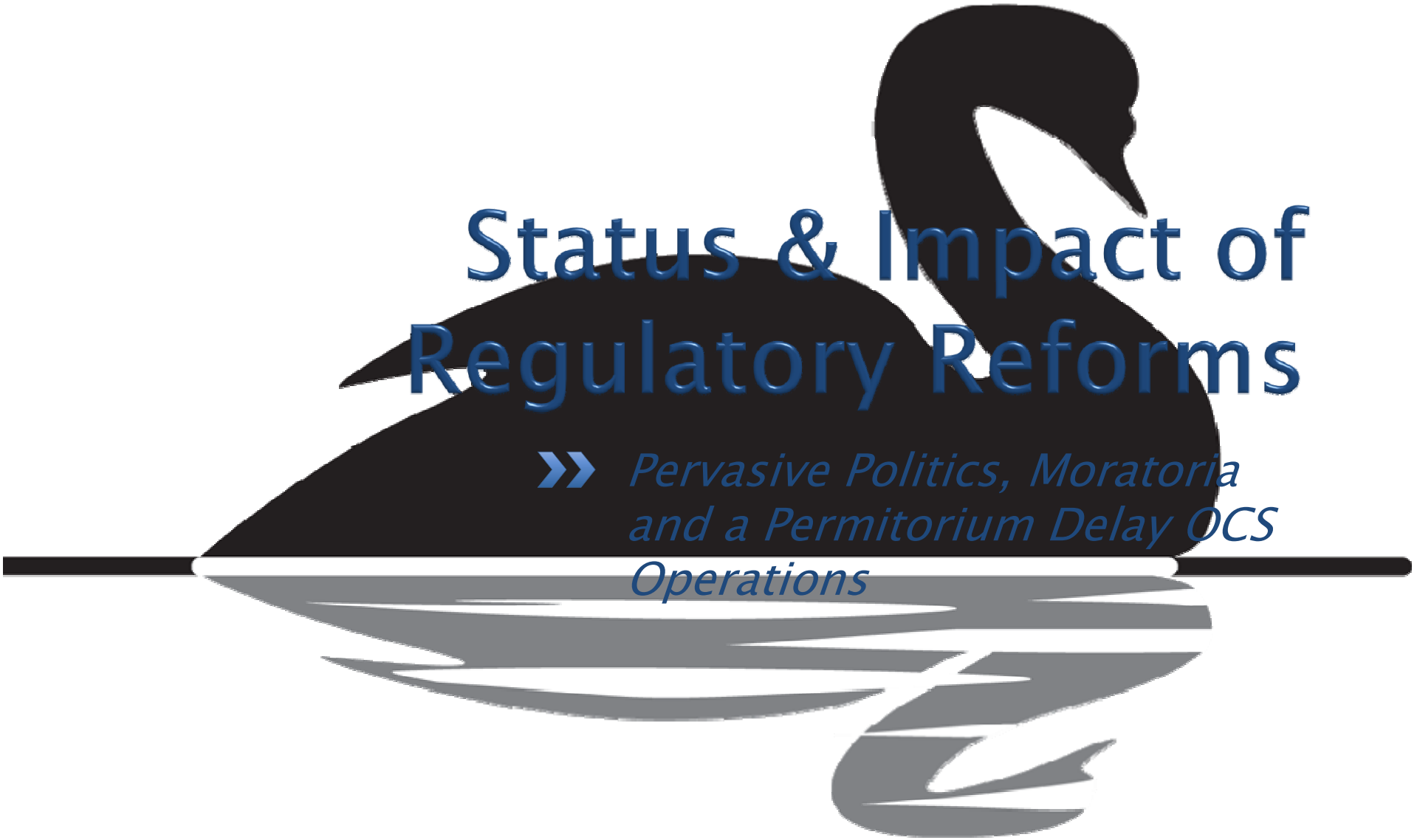
*Inspection & Review Unit*

# Expectations of Reorganization

- Expansion of Agency Workforce
  - Additional Fees Permitting & Inspection
  - Additional Fees on Leasing
- More Segregation of Authority
  - Greater Scrutiny of Work Plans
  - More Information Requests by Agency
  - Longer Processing & Approval Times
  - Increased Expectations to Lower Operational Risk
    - Additional Recommended Practices & Standards
    - Increased Demands for Certifications of Equipment & Plans
    - More Frequent Changes to CFR's
- Increased Frequency of Inspections
  - Increased Frequency of INC's
  - Increased Incidents of Civil Penalties
    - Safety
    - Environmental

# Status & Impact of Regulatory Reforms

- *Pervasive Politics, Moratoria and a Permitorium Delay OCS Operations*



# Loss of Well Control

- Well Control Statistics – Buffalo Report
  - 50,000 wells drilled on OCS since 1947
    - 1,800-bbls of oil spilled since 1970
    - 20 pollution events since 1964 reference blowouts
    - 6 of those events reference drilling operations.
  - *4,000 wells drilled in over 1,000-ft WD in the GOM*
    - *Events = 1 serious (Macondo ) & 1 Minor*
    - *$P_{LWC}$ Serious = 2.5 x $10^{-4}$*
- Bridging Statistics
  - 90% of Blowouts Bridge in ~ 7 Days
- Macondo Blowout
  - Blowout did not occur during drilling.
  - Blowout occurred during the "Completion Phase"
    - Technically during the Temporary Abandonment
  - Cumulative Human Errors Caused the Blowout
    - BP's Preliminary Internal Investigation Cites 8 Key Findings
    - Presidential Commission Report Cites 9 Decisions by BP that Increased Risk
- Loss of Well Control Risk
  - Occurs in All Phases of Operations

# Comparative Risk Information



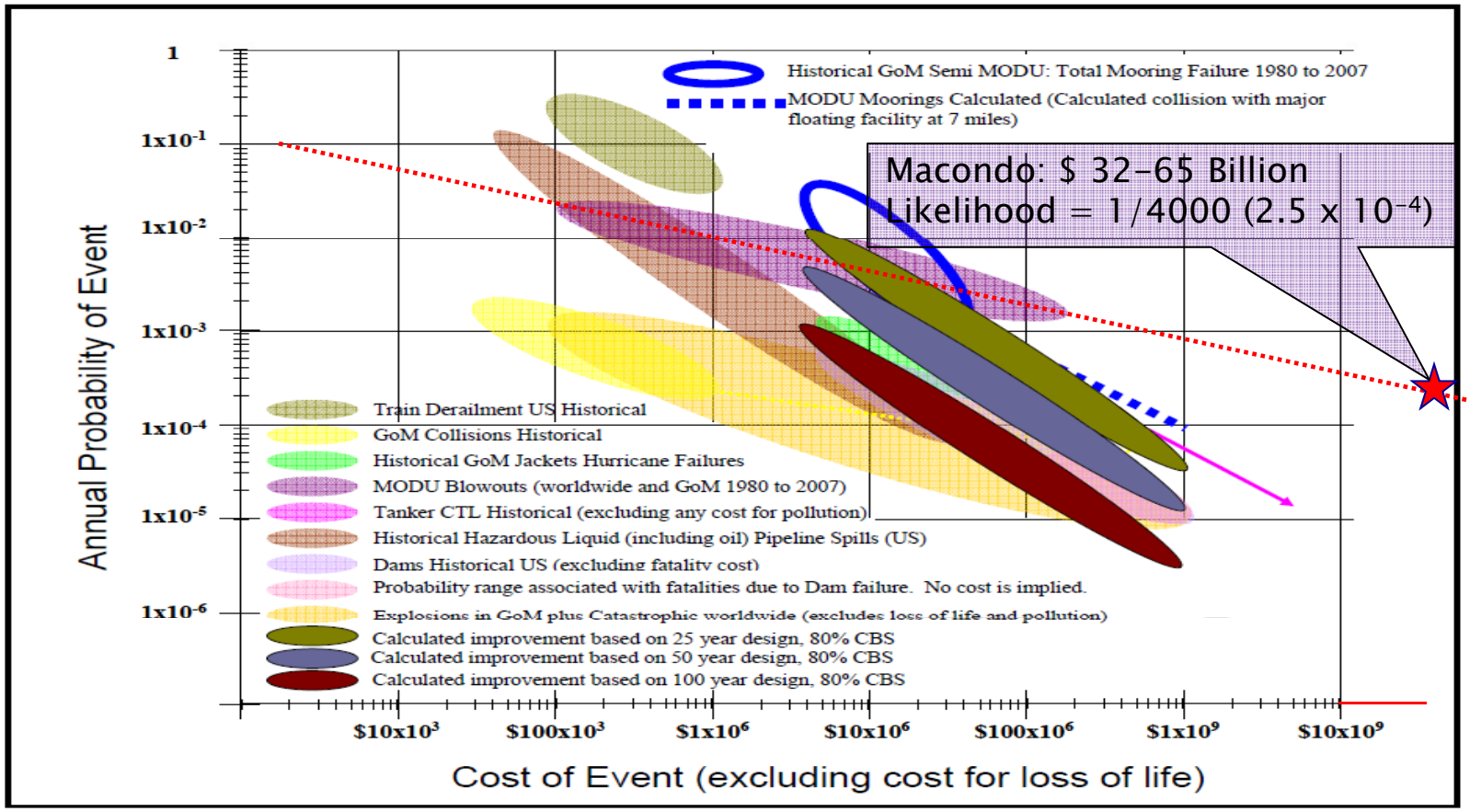
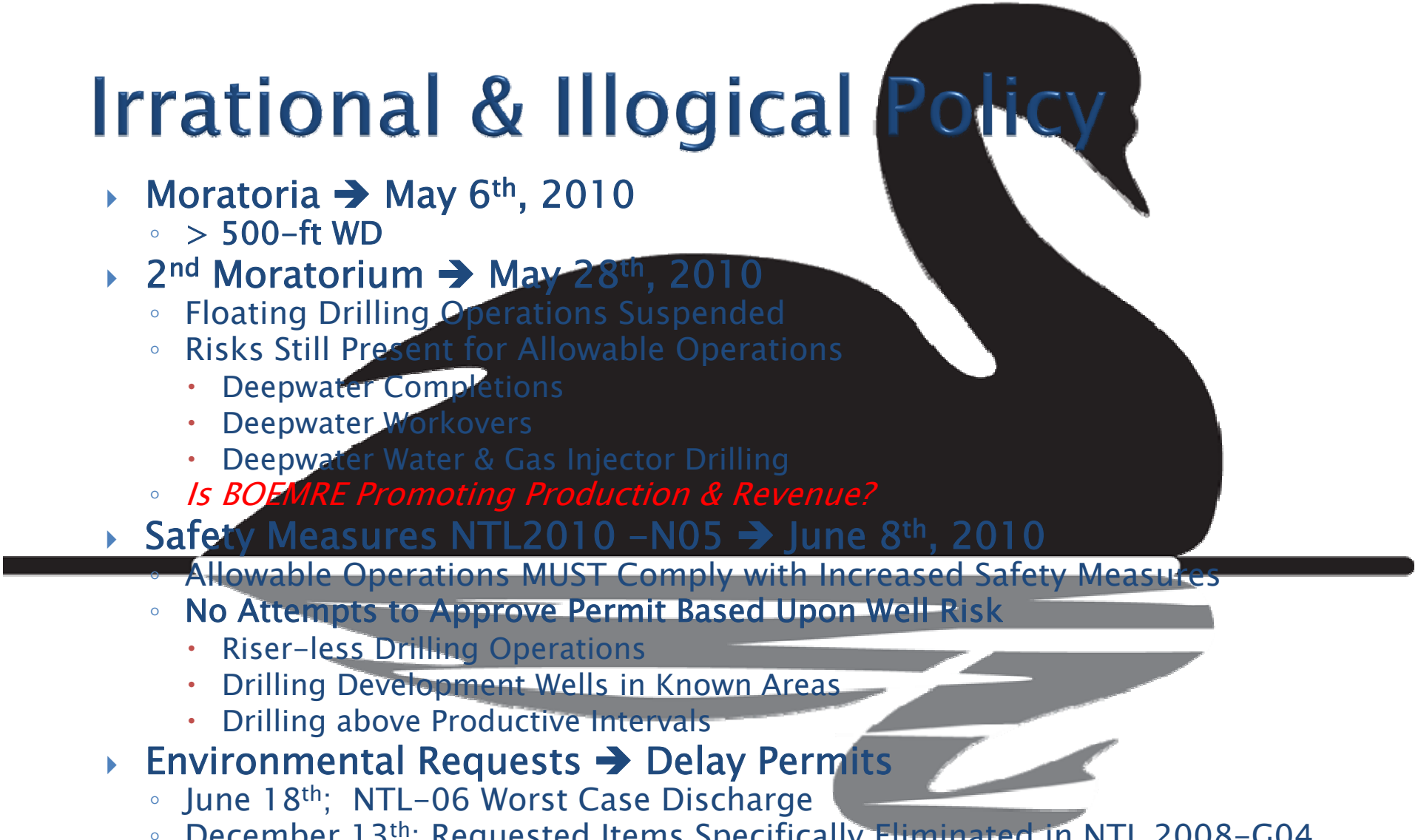



**Figure 5-2 Summary of Risks including Calculated Improvement in Moorings by Increasing Design Return Period above 10 year minimum**

# Irrational & Illogical Policy



- Moratoria ➔ May 6th, 2010
  - > 500-ft WD
- 2nd Moratorium ➔ May 28th, 2010
  - Floating Drilling Operations Suspended
  - Risks Still Present for Allowable Operations
    - Deepwater Completions
    - Deepwater Workovers
    - Deepwater Water & Gas Injector Drilling
  - *Is BOEMRE Promoting Production & Revenue?*
- Safety Measures NTL2010 -N05 ➔ June 8th, 2010
  - Allowable Operations MUST Comply with Increased Safety Measures
  - No Attempts to Approve Permit Based Upon Well Risk
    - Riser-less Drilling Operations
    - Drilling Development Wells in Known Areas
    - Drilling above Productive Intervals
- Environmental Requests ➔ Delay Permits
  - June 18th; NTL-06 Worst Case Discharge
  - December 13th; Requested Items Specifically Eliminated in NTL 2008-G04.

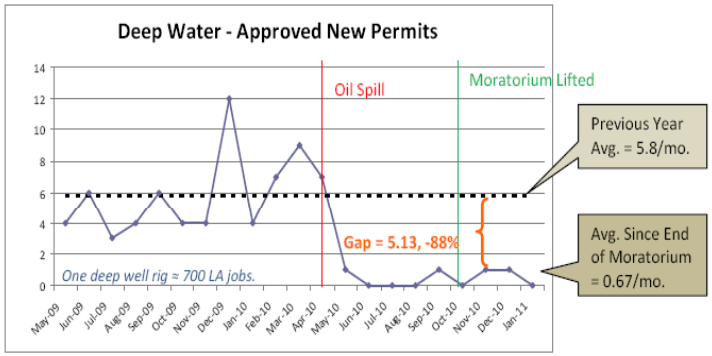
# Impact on Permitting

- **Plan Delays**
  - NTL-06 Compliance
  - WCD Interpretations
  - Added Environmental Information
- **Permit Delays**
  - Effective Immediately
  - Region & District Interpretation
  - Trial & Error Submittals
  - Additional Information
  - Deepwater Well Containment Plan
- **Agency**
  - Absent Deadlines
  - Politics & Policy

*GPI as of January 18, 2011*

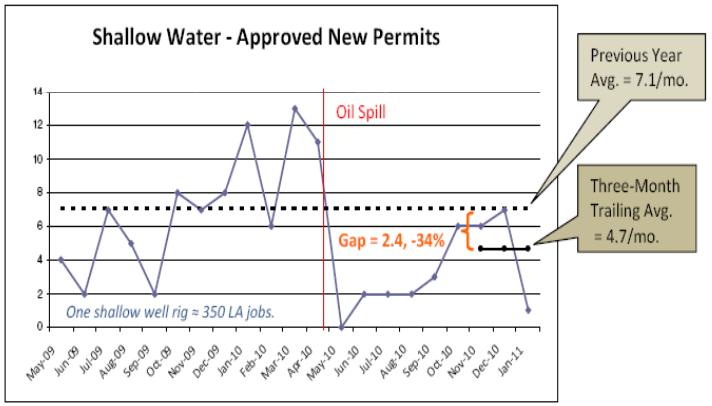
**Deep Water**

Two new deep-water permits have been issued since the moratorium was lifted, an 88% decrease from the historical average




**Shallow Water**

4.7 shallow-water permits are being issued per month, with a slight trend away from the historical average following last month's increase



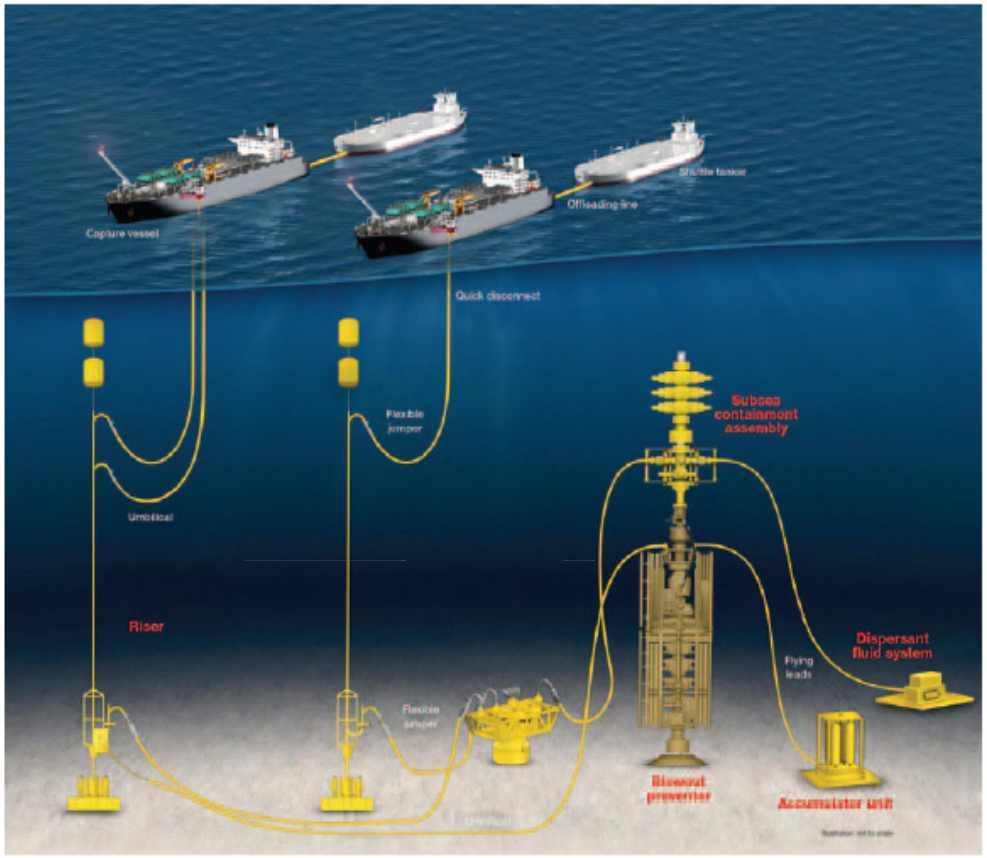
# Impact on Business & Operations

- Idle Rigs as of 15-Feb-11
  - Deepwater =16 Working/41 Marketed = 39% Utilization
  - Shallow Water =34 Working/51 Marketed = 67% Utilization
    - 80% Utilization 1st Q-2010
- Rigs Departing GOM
  - Seven 5th & 6th Gen Deepwater Rigs
  - ~13 Shallow Water Rigs
- Containment & Contingency Planning
  - MWCC and Helix Striving to Meet Agency Requirements
  - Onerous Well Design Load Cases
- Equipment & Experience Moving Out of GOM
- Production Losses
- Growing Backlog of Exploration & Development
- Shift is Type of Well Work Based Upon Permitting
  - Sidetracks on the Shelf
  - Completion, Workover & Abandonments
- Lost time on lease term.

# Containment Options

- Marine Well Containment LLC (MWCC)
  - Super Majors
- Helix System
  - Independents
- Titan Salvage Group
- Wild Well Control

FIGURE 8.3: Schematic of the Marine Well Containment System




*Courtesy of the Marine Well Containment Company LLC*

# Impact on Jobs

- Job Losses per LSU Study
  - ~700 per deepwater rig
  - ~350 per Shallow water rig.
- Technical & Professional Jobs
  - Additional Workload of Reforms ➔ More jobs/rig.
  - More HSE Compliance Jobs
  - More Certification & Quality Assurance Demands
- Likely Long Term Impacts
  - Increased Operating Cost
    - Compliance & Reforms
    - Equipment
  - Contract Pool of Operators
    - Minimum Capitalization
    - Insurance & Liability Reforms
  - Fewer Opportunities
    - Minimum Economic Field Size will Increase

# Future of the OCS

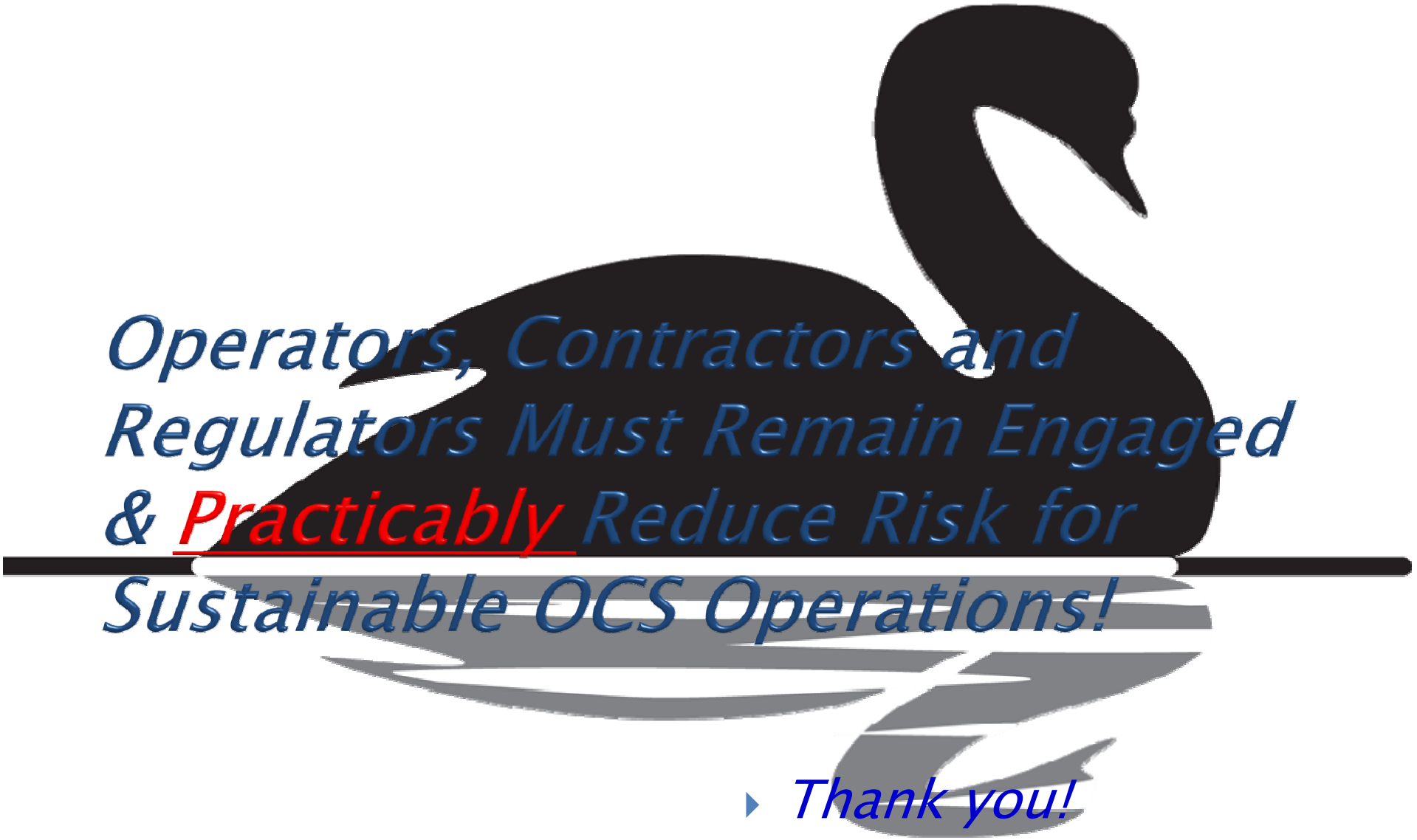
- *Agency – Industry Codependence & Potential Winners & Losers*

# Agency – Industry Codependence

- Focus on Specific Safety Critical Items
  - Engineering Design
  - Quality Control
  - Process Management
  - Barrier Management
- Cooperation & Coordination Challenges
  - Reduce Operational Risk
    - Improve Standards, Practices and CFR's
    - Focus on High Impact Technology
  - Improve Productivity without Compromising HSE Objectives
  - Emergency Response
    - Improve Intervention Response Time
    - Industry Wide Drills
  - Industry Should Help Advance the Agency's New Hire Program
    - Technical Support
    - Operational Access
- The Agency must Avoid
  - "Generalized Mandates"
  - Improper Rule Making
  - Being perceived as a roadblock instead of an enabler.

# Potential Winners & Losers

- Winners
  - Environmentalists & the Green Energy Agenda
  - BOEM/BSEE ➔ Increased Funding, Power & Control
  - Offshore Workers ➔ Improved Safety & Equipment
  - Large Independents, Majors and NOC's
    - Less Competition
  - Engineering, Inspection & Certification Firms
  - Health Safety & Environmental Specialists
- Losers
  - National Security ➔ More Foreign Dependence
  - Consumers ➔ Higher Energy Prices
  - Economy ➔ Higher Energy Prices & Fewer OCS Jobs
  - Small Independents ➔ Offshore Risk Profile



# Operators, Contractors and Regulators Must Remain Engaged & Practicably Reduce Risk for Sustainable OCS Operations!

- *Thank you!*

# DECOMMISSIONING OBLIGATIONS FOR PROPERTIES LOCATED ON THE OCS

**Speakers:**

**Scott A. O'Connor**

**Bill Napier**

## I. Overview of "Legacy" Litigation

A. Lawsuits seeking damages for contamination to the soil or surface water or groundwater at or near an oilfield site are sometimes referred to as "legacy" cases, because the alleged contamination is often the result of exploration and production activity conducted decades ago. Such contamination is an unwanted "legacy" of the period when oil and gas operations were conducted without the present body of Federal and State regulatory protections for the environment. Such contamination forms the subject of lawsuits brought by landowners against present and former operators of a site, as well as other parties contractually obligated to indemnify and hold harmless prior operators.

B. Corbello v. Iowa Production, et al

-- In 2003, the Louisiana Supreme Court rendered a landmark decision in the case of Corbello v. Iowa Production et al, 850 So.2d 686 (La. 02/25/03). The Corbello case involved a surface lease rather than a mineral lease. It was alleged that the defendants (primarily Shell Oil Company) violated the terms of the surface lease, and contaminated both the surface and groundwater of the property, by excessive dumping of produced saltwater. The property had a fair market value of $108,000.00. In addition to other damages, a jury in Calcasieu Parish awarded $33,000,000.00 as the cost necessary to restore the property to its pre-lease condition. A large component of the award pertained to the projected cost necessary to protect the underlying Chicot Aquifer.

--The Louisiana Supreme Court held that the award of damages was not "tethered to the market value of the property." Instead, it affirmed an award for remediation which was over thirty times as much as the fair market value of the property.

--In affirming the award, the Court also recognized that there was then no legal requirement that the landowner use the money awarded for remediation to actually remediate the property. The Court did note "the need for a comprehensive body of legislation wherein the State would oversee the problem of oil field waste sites."

## II. Act 312 of 2006

A. In response to Corbello, and to the growing number of cases seeking substantial sums of money for costs associated with remediation of property, the Louisiana legislature enacted Act 312 of 2006. The statute is formally designated as La. R.S. 30:29, but is commonly referred to as "Act 312."

B. Act 312 provides the "procedure for judicial resolution of claims for environmental damage to property arising from activities subject to the jurisdiction of the Department of Natural Resources, office of conservation." La. R.S. 30:29A.

--Definition of Environmental Damage: "Environmental damage shall mean any actual or potential impact, damage, or injury to environmental media caused by contamination resulting from activities associated with oilfield sites or exploration and production sites. Environmental media shall include but not be limited to soil, surface water, ground water, or sediment." La. R.S. 30:29I(1).

## III. The "Responsible Party" Concept in Act 312

A. With the important exception of cases that are settled by compromise agreement (see below regarding La. R.S. 30:29J), the provisions of Act 312 pertain to parties who either "admit liability" or are "found legally responsible" for causing environmental damage.

B. Admissions of liability are uncommon.

C. In most instances, a full trial on the merits, at substantial expense to all parties involved, will be required before a party is "found legally responsible." In a case of trial by jury, the lay persons comprising the jury will ultimately make the finding as to who caused the damage, and who is liable therefor.

D. The Importance of the Lease Provisions In Determining Liability

1) Since most oil and gas operations are conducted pursuant to rights granted by a Mineral Lease, or assignment/sub-lease of same, it is critically important to scrutinize the provisions of the lease documents to identify the specific obligations which exist for the various parties in the lease chain with respect to property restoration.

--Example 1: In Corbello, the surface lease provided: "Lessee further agrees that upon termination of this lease it will reasonably restore the premises as nearly as possible to their present condition." The Louisiana Supreme Court applied this clause, as written, and imposed upon the lessee Shell Oil Company the obligation to restore the premises to its pre-lease condition.

-- Example 2: Different contractual language was interpreted by the Louisiana Supreme Court in Terrebonne Parish School Board v Castex Energy, Inc., 893 So.2d 789 (La. 01/19/05). The pertinent restoration language (which was actually contained within an assignment document) was to: "Restore the condition of the surface of the leased premises, in compliance with applicable state and federal regulations." The issue in the Terrebonne Parish School Board v Castex case was whether a Corbello-like obligation existed on the part of the oil

companies to restore the property to its pre-lease condition by back-filling a number of canals that had been dug. The Louisiana Supreme Court again applied the lease language as written, and concluded that since there were no state or federal regulations that required the back-filling of canals, there was no contractual obligation to do so.

2) Leases are sometimes silent as to any specific restoration obligation. For example, there is no specific restoration language in either the standard Bath 14 ("North Louisiana form") or the Bath 4A ("South Louisiana Lessor's form") or the Bath 6 ("South Louisiana Lessee's form"). "Implied obligations" to remediate must also be considered.

E. Implied Obligation to Restore the Property

1) In addition to any express contractual provisions on restoration, or the lack thereof, certain "implied obligations" must also be considered.

--Marin v. Exxon 48 So. 3d 234 (La. 10/19/10): "The Civil Code lease provisions require the mineral lessee to perform certain restoration obligations during the lease term, and these obligations are governed by Civil Code articles 2683, 2686, 2687, and 2692."

--Broussard v Hilcorp Energy: 24 So.3d 813 (La. 10/20/09): "Implied duty to restore or remediate property is no longer encompassed in the prudent operator standard" of Mineral Code article 122.

2) Two recent cases have held that the right to seek damages for restoration is not automatically transferred to purchasers who acquire the property after the damage has been caused. LeJeune Bros., Inc. v. Goodrich Petroleum, 981 So. 2d 283 (La. App. 3d Cir. 11/28/07);

Waggoner v. Chevron, (on rehearing 2d Cir. No. 45,507-CA, 11/24/10).

Another recent case, however, held that a plaintiff landowner does have a right of action for pre-acquisition damages. Eagle Pipe & Supply, Inc. v. Amerada Hess Corp., 2009-0298, 47 So.3d 428 (La. App. 4th Cir. Sept. 8, 2010) (on rehearing). Eagle Pipe reasoned, based on Louisiana Civil Code article 2315's mandate that every act causing damages obliges the tortfeasor to repair it, as follows: "The injury is not dispelled by a subsequent purchase, and therefore we see no reason why the right to seek remedy for it should be. The injured party should not be precluded from seeking reparation merely because the damage remained hidden long enough for the property to be sold." The Louisiana Supreme Court recently accepted writs in this case.

--A different rule prevails where there has been an express contractual assignment to the purchaser of the right to recover restoration damages, or when there is language in the mineral lease that creates rights in a third party to recover such damages (known as a "stipulation pour autrui.") See: Magnolia Coal Terminal v Phillips Oil Company, 576 So.2d 475 (La. 1991).

## IV. Remediation Obligations Under Act 312

A. Significant remediation obligations become imposed upon those who either "admit liability" or are "found legally responsible" for remediation of environmental damage.

B. Such parties are required to formulate a remediation plan and submit same to the Office of Conservation for review. The plan must include an estimate of the costs to implement the plan. La. R.S. 30:29C(1).

C. A public hearing on the proposed remediation plan is required, after which the Office of Conservation will either approve the proposed plan, or develop its own plan. La. R.S. 30:29C(2). The court "shall adopt the plan approved by the Department, unless a party proves by a preponderance of the evidence that another plan is a more feasible plan." La. R.S. 30:29C(5).

D. "All damages or payments in any civil action, including interest thereon, awarded for the evaluation or remediation of environmental damage shall be paid exclusively into the registry of the court in an interest-bearing account with the interest accruing to the account for clean up." La. R.S. 30:29(D)(1). This provision addresses the specific Corbello-type situation of requiring money awarded by a Court for remediation to be placed in an account specifically for remediation purposes.

E. Money deposited into the registry of the court can be drawn out in increments, but a party wishing to do so must post a bond. La. R.S. 30:29D(2)

F. The Court retains control over the clean up effort. However, the Office of Conservation and Department of Natural Resources also retains all of its statutory and regulatory rights, such that compliance with Act 312 does not bar the Office of Conservation from requiring additional remediation efforts. La. R.S. 30:29D(3).

G. If the amount initially deposited is found to be inadequate, the Court has the authority to order additional money to be paid into the registry of the court to cover clean up costs. La. R.S. 30:29D(4).

H. Parties admitting responsibility or who are found legally responsible by the Court are also obligated to pay "all costs attributable to producing that portion of the evidence that directly relates to the establishment of environmental damage, including, but not limited to, expert witness fees, environmental evaluation, investigation, and testing, the cost of developing a plan of remediation, and reasonable attorney fees incurred in the trial court and the department." La. R.S. 30:29E

## V. Matters Beyond the Scope of Act 312

A. The provisions of Act 312 do not apply to "private claims". La. R.S. 30:29H. The term "private claims" is not specifically defined, but is generally thought to include at least the following, non-exclusive, types of damages:

1) Diminution of property value;

2) Any personal injury from exposure to the contaminants;

3) Payments owed under an express contractual provision that might impose a clean up obligation more expansive than that required by the Office of Conservation's plan.

## VI. Compromise Settlement Agreements under Act 312

A. Most of the provisions of Act 312 apply to parties who either "admit liability" or are found "legally responsible" after a full trial on the merits. Because of the stringent requirements placed upon such parties, outlined above, defendants with realistic exposure for liability may find it advantageous to enter into pre-trial compromise settlement agreements. La. R.S. 30:29J governs settlement agreements made in Act 312 cases, and provides much more flexibility to the parties in achieving a resolution of the case.

B. A compromise settlement can create a “win-win” situation for the landowner, the oil company, and the state—Property that requires remediation can be cleaned up, under a plan that can be realistically funded, with compensation and reimbursement of fees also being paid to the landowners for claims not covered by Act 312. A compromise settlement agreement can also obviate the substantial expense related to legal and expert witness fees that would otherwise be incurred if the case proceeds to trial. Such a settlement also brings certainty to the exposure of the defendant.

C. Measures Required Under La. R.S. 30:29J:

1) Once a “settlement in principle” is reached, the parties must give notice to both the Office of Conservation and to the Attorney General.

2) The Office of Conservation is then entitled to “no less than thirty days to review that settlement and comment to the court before the court certifies the settlement.”

3) While the department is entitled to offer its comments to the Court, it is ultimately the Court’s decision as to whether or not to approve the settlement.

4) Under a strict interpretation of the La. R.S. 30:29J, even if the Office of Conservation objects to the proposed settlement, or does not provide any comment within the 30 day period set forth in the statute, the parties are nonetheless free to ask the Court to approve the settlement, and the Court has the authority to approve the settlement. However, it must be remembered that the Office of Conservation and Department of Natural Resources at all times retain their statutory and regulatory powers, such that a decision to seek Court approval of a plan to which the Office of Conservation objects, or has not yet commented, may be shortsighted move.

5) It is highly recommended that the remediation plan to be submitted be formulated by a consultant having a good working relationship with the Office of Conservation.

D. Measures Not Required Under La. R.S. 30:29J:

1) There is no need for a public hearing on the proposed plan.

2) In a case resolved by a pre-trial compromise settlement, there is no absolute requirement that the costs of remediation be deposited into the registry of a court, although the parties can make this a condition of settlement, and the Court does have the ability to order such a deposit after a “contradictory hearing.”

3) There is no express requirement that a bond be posted;

4) There is no provision by which the Court can order additional funds, beyond those agreed to in the settlement, to be deposited to pay for additional payment costs (unless same was made a condition of settlement).

E. De Minimis Settlements. Under La. R.S. 30:29J, “the Court shall have the discretion to waive the requirements of this Section if the settlement reaches for a minimal amount and is not dispositive of the entire litigation.”

1) The term “minimal amount” is not defined in the statute.

2) Among the factors likely to be considered are the size of the oil company and its ability to absorb and pay the remediation costs, and also the size of the particular settlement under consideration in comparison to the overall projected costs of remediation.

## VII. The Office of Conservation "Guidance Document"

A. On April 27, 2009, Commissioner of Conservation James H. Welsh issued a "Guidance Document" outlining the general approach of the Office of Conservation to its review of settlements submitted to it pursuant to La. R.S. 30:29J.

B. For settlements that require an evaluation or remediation plan, the entire plan must be submitted to the Office of Conservation along with complete details of the proposed settlement. The Office of Conservation will not consider its 30-day period for review to begin running until it receives the complete plan.

C. The Office of Conservation will generally issue one of three letters:

1) An "Approval Letter;"
2) A "Letter of No Objection;" or
3) A "Letter of Objection."

D. The Guidance Document also addresses six "situations" commonly presented to it, and which type of letter it is likely to issue to the Court.

## VIII. Special Considerations

--Fee Contract Language
--Settlement Language

# Discussion of Ethics Related Rules of the American Association of Professional Landmen (AAPL)

**By David A. Seay, Land Manager**
**Century Exploration New Orleans, Inc.**

**PLANO's Educational Seminar**
**Executive Night, March 3, 2011**

# AAPL's Ethics Related Rules

- **Code of Ethics** – found in Article XVI of the Bylaws
- **Standards of Practice** – adopted to inform the membership of the specific conduct, business principles and ideals mandated by the Code of Ethics
- **Complete versions of Code of Ethics & Standards of Practice available at www.landman.org**

# Summary of AAPL Code of Ethics

- **Fair and honest dealing with landowners, industry associates and the general public so as to preserve the integrity of the profession (Article XVI, Section 1)**
- **Adherence to a high standard of conduct in fulfilling his/her fiduciary duties to a principal (Article XVI, Section 2)**
- **Avoiding business activity which may conflict with the interest of his/her employer or client or result in the unauthorized disclosure or misuse of confidential information (Article XVI, Section 2)**
- **Performance of professional services in a competent manner (Article XVI, Section 2)**

# Summary of AAPL Code of Ethics (continued)

- **Adherence to any provisions of the Bylaws, Code of Ethics, or any rule, regulation, or order adopted pursuant thereto (Article V, Section 9)**

- **Avoiding the aiding or abetting of any unauthorized use of the title "Certified Professional Landman," "Registered Professional Landman," "P. Land" or "CPL/ESA" (Article V, Section 9)**

- **Avoiding any act or conduct which causes disrespect for or lack of confidence in the member to act professionally as a land professional (Article V, Section 9)**

# Summary of AAPL's Standards of Practice

- **Be informed of laws, proposed legislation, governmental regulations, public policies and market conditions**
- **Protect members of the public in all dealings against fraud, misrepresentation and unethical practices and eliminate any practices that may discredit the industry**
- **Protect and promote the interests of the employer or client**
- **Shall not accept compensation from more than one principal for providing the same service nor accept compensation from more than one side of a transaction without full disclosure**

# Summary of AAPL's Standards of Practice (continued)

- **Shall not deny equal professional services to any person for reasons of race, creed, sex or country of national origin or be part of a plan to discriminate for these reasons**

- **Shall not make representations regarding being skilled in professional disciplines in which he/she is not qualified such as the practice of law, geology, engineering, etc.**

- **Shall not provide services concerning a property or a transaction where he/she has a present or contemplated interest without full disclosure**

# Summary of AAPL's Standard of Practice (continued)

- **Shall not acquire for own account an interest in property which he/she is called upon to purchase or lease for a principal or client without consent of the principal or client**

- **If charged with an unethical practice or has knowledge of unethical misconduct of another member, must present all pertinent facts before the proper authority of AAPL**

# AAPL's Standards of Practice (continued)

- **Shall not accept any commission, rebate, interest or other profit in transactions made for an employer or client without full disclosure to the employer/client**

- **Shall protect and account for all monies coming into his/her possession in trust from an employee or client such as escrows, advances for expenses or bonus payments**

# AAPL's Standards of Practice (continued)

- **Shall avoid business activity conflicting with employer/client interests or resulting in unauthorized disclosure or misuse of confidential information**
- **Shall present accurate representations in all disclosures to the public**
- **Shall not aid or abet the unauthorized use of CPL, RPL and/or CPL/ESA titles**
- **Shall not be involved in any activity causing him/her to be found guilty of any felony or offense involving fraud or other serious crime**

# Ethics in Lease Negotiations

- **No lies – no partial truths – no avoiding questions**
- **If the Landman occupies a fiduciary or confidential relationship with the mineral owner, need to disclose all material facts**
- **If the Landman occupies a position of superior knowledge, need to disclose all material facts**
- **Violation could amount to fraud leading to loss of the lease – it's the law, not just a matter of ethics**

# Example of a Change in Perception

- **Top Leasing – considered highly unethical prior to ±1975**
- **±1975 to ±1980 – gray area/transitional period**
- **Post ±1980 – better renew your leases early**

# AAPL Ethics Committee Procedures

- 9 members appointed by AAPL's President except for the assistant chairperson (appointed by First VP)
- Written allegations of misconduct along with full supporting evidence must be submitted in writing to AAPL's Executive VP
- Ethics Committee can do its own investigating
- A hearing may be held –the accused may appear with legal counsel and hear the testimony of the witnesses, may cross examine the witnesses as well as make his/her own oral or written statement

# AAPL Ethics Committee Procedures (continued)

- By 2/3 vote, the committee shall decide (a) dismiss complaint, (b) censure, (c) suspension, (d) allow accused to resign or (e) expulsion
- Accused has a right to appeal
- If the final decision is suspension, resignation or expulsion, the decision is published in the Landman magazine
- Unlike the rules for attorneys, landmen may still perform land services while suspended, etc.

# AAPL Code of Ethics Bottom-line

- **Although Landmen voluntarily belong to AAPL and therefore to a great extent are voluntarily subject to the Code of Ethics, the Code generally follows the law – anyone breaching the Code of Ethics, whether a member of AAPL or not, is most likely in danger of violating the law**

# IF IT AIN'T BROKE . . . .: TEXAS LAWYERS STICK WITH THE OLD RULES OF PROFESSIONAL CONDUCT

**JANIS H. DETLOFF**
**KIMBERLY R. SNAGG**

**PROFESSIONAL LANDMEN'S ASSOCIATION OF NEW ORLEANS**
**2011 EXECUTIVE NIGHT SEMINAR**
**MARCH 3, 2011**

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## I. INTRODUCTION

In 1990, the Texas Supreme Court adopted the current Texas Disciplinary Rules of Professional Conduct—Texas lawyers have been guided by the same set of ethical and disciplinary rules for over 20 years. However, since that time, technology and other factors have changed the way we practice law. Additionally, the American Bar Association ("ABA") significantly revised its Model Rules of Professional Conduct in consideration of recommendations made by the Ethics 2000 Commission. [1] In recognition of those facts, the Texas Supreme Court appointed a task force to review our rules and compare them to the ABA Model Rules of Professional Conduct. The task force completed its review and submitted a report with its recommended changes to the Court.[2]

After an intensive review of the proposed changes, various additions, deletions, and modifications—the Court approved a referendum on the proposed amendments to the Texas Disciplinary Rules of Professional Conduct.[3] Members of the State Bar of Texas voted on the amendments on January 18, 2011 through February 17, 2011. After the ballots were tallied, the proposed amendments were struck down by a resounding "no" vote.

This paper will briefly examine the failed amendments and whether the current Texas Disciplinary Rules of Professional Conduct can continue to serve us, unaltered, in light of technological advances and the ever-changing practice of law.

## II. THE PROPOSED AMENDMENTS

According to the State Bar of Texas, the proposed rules were to take account of the ways in which technology has changed our lives, provide a practical framework in which to represent clients, and guide members of the legal community. Further, the amendments were to bring our current rules in line with the rules of other jurisdictions.[4]

The ballot was broken into six questions for the various segments of the bar membership. Below is a brief overview of each of the sections.

### A. Terminology, Competent and Diligent Representation, Scope of Representation and Allocation of Authority, Communication, Fees, Confidentiality, Safekeeping Property, and Declining or Terminating Representation

The proposed rules sought to add words to Rule 1.00, "Terminology." The added terms were: "affiliated," "confirmed in writing," "informed consent," "personally prohibited,"

[1] Supreme Court of Texas, Approval of Proposed Amendments to the Texas Disciplinary Rules of Professional Conduct, Misc. Docket No. 09-9175, at 1 (Oct. 20, 2009).

[2] *Id.* at 2.

[3] Supreme Court of Texas, Approval of Referendum on Proposed Amendments to the Texas Disciplinary Rules of Professional Conduct, Misc. Docket No. 10-9190, at 1–2 (Nov. 16, 2010).

[4] STATE BAR OF TEXAS, GUIDE TO THE ISSUES.

"reasonably should know," "represents," and "writing" or "written." The amendments also proposed changes to terms already defined: "firm" or "law firm," "fitness," "fraud" or "fraudulent," "partner," "substantial" or "substantially," and "tribunal."[5]

The amendments attempted to add clarity to Rule 1.01, "Competent and Diligent Representation," by defining "informed consent" and providing a "reasonableness" standard to subsection (b) in accepting and limiting attorney-client representation. The reasonableness standard replaces the old "a lawyer shall not frequently fail to carry out completely the obligations that the lawyer owes to a client or clients."[6]

Proposed Rule 1.05, "Confidentiality" was reworked to define "confidential information" differently. The proposed amendments removed references to "privileged information and unprivileged client information." Further, the new rule would have distinguished between confidential information of a client or former client versus the information of a prospective client.[7]

The standards governing the safekeeping of property were revised to clarify the obligations of a lawyer who holds the property of others. The proposed Rule 1.15 differentiated between the lawyer's obligation to a client versus a third person and clarifies the lawyer's obligation when there is a dispute regarding the property, and addresses when the lawyer may withdraw fees and expenses from a client trust account and when the lawyer may deposit the lawyer's own funds into the account.[8]

### B. Conflicts of Interest: Multiple Clients in the Same Matter

Rule 1.07 addresses a lawyer's obligations relating to the representation of multiple clients in the same matter. The proposed changes substantially revise current Rule 1.07 which focuses more on the lawyer's role as an intermediary rather than as an advocate for multiple clients in the same matter.

### C. Other Conflicts of Interest

Proposed Rule 1.06 follows the ABA standard when determining whether a conflict of interest exists. The rule then addresses representations a lawyer shall not undertake, even with a client's informed consent, and representations a lawyer may undertake with a client's informed consent, even though there is a conflict of interest.[9] The proposed rule removed the

[5] Kennon L. Peterson, *Proposed Amendments to the Texas Disciplinary Rules of Professional Conduct: Brief Background and Explanation Updated November 2010*, 73 TEX. B.J. 894, 894–95 (2010).

[6] *Id.* at 895.

[7] *Id.*

[8] *Id.* at 897.

[9] Peterson, *supra* note 5, at 896.

"substantially related matter" standard for determining whether a conflict exists. The rule added new terms, including "affiliated"[10] and "personally prohibited"[11]: "When a lawyer is *personally prohibited* by this Rule from representing a person in a matter, no lawyer who is affiliated with the *personally prohibited* lawyer, and who knows or reasonably should know of the prohibition, shall represent that person in that matter. The latter part of the rule provides an imputation standard for *affiliated* lawyers.

Additionally, the proposed rules attempted to flesh out the bounds of prohibited transactions. In Rule 1.08 a restriction is imposed on a lawyer's ability to solicit a substantial gift from a client. Further, Rule 1.08 enhanced the disclosures a lawyer must make to a client before executing an aggregate settlement.

Proposed Rule 1.09 set out the context in which conflicts of interest involving a former client prohibit the lawyer or the lawyer's law firm from representing a new client.

Proposed Rule 1.10 describes the context in which current and former client conflicts of interest affect a lawyer that has left government service and entered private practice. The amendment further revised the definitions of *matter* and *private client*, and enhanced the requirements for the notice that must be given when screening is implemented.

Rule 1.11 is the primary conflict of interest rule for adjudicatory officials, third-party neutrals, and court lawyers. The proposed amendment to this rule included new terminology, *court lawyers*, revised terminology, *tribunal*, and enhanced the requirements for the notice that must be given when screening is implemented.

Proposed Rule 1.12(b) now requires a lawyer to comply with Proposed Rule 1.07 (multiple client representations) if the lawyer jointly represents an organization and a constituent of that organization.

### D. Prohibited Sexual Relations, Diminished Capacity, and Prospective Clients

The referendum sought to introduce three brand new rules under this section of proposed changes. Rules 1.13, 1.14, and 1.17 addressed conditioning representation or the payment of fees on sexual relations with the client or prospective client. The rules further addressed the lawyers responsibilities and duties when representing a client with diminished capacity. The

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[10] "Affiliated":

(1) A lawyer is "affiliated" with a firm if either the lawyer or the lawyer's professional entity:
  (i) is a shareholder, partner, member, associate, or employee of that firm;
  (ii) has any other relationship with that firm, regardless of the title given to it, that provides the lawyer with access to the confidences of the firm's clients that is comparable to that typically afforded to lawyers in category (i); or
  (iii) is held out as being in category (i) or (ii).

(2) A lawyer is "affiliated" with another lawyer if either the lawyers or their professional entities have any of the relationships described in categories (i)—(iii) above.

[11] "Personally prohibited" means a lawyer is prohibited based on the lawyer's direct knowledge or involvement rather than being prohibited based on the lawyer merely being affiliated with another lawyer.

proposed new rules under this section also defined "prospective client" and addressed a lawyer's obligations relating to a prospective client.

### E. Advocate, Law Firms and Associations, Public Service, and Maintaining the Integrity of the Profession

The proposed amendment under this section sought to clarify a lawyer's obligation of candor toward a tribunal and refine a lawyer's obligation relating to criminal or fraudulent conduct. Additionally, this rule attempted to clarify that when a tribunal appoints a lawyer to represent a person, the lawyer is obligated to represent the person until the representation is terminated. Further, this section required a lawyer to report findings of guilt or an order of deferred adjudication by any court for the commission or an intentional or serious crime.

### F. Counselor, Non-Client Relationship, Information About Legal Services, and Severability of Rules

The proposed changes under this section were primarily technical, added references to terminology and consistency in formatting.[12]

## III. RESULTS OF THE STATE BAR OF TEXAS REFERENDUM OF 2011[13]

Question A. Terminology, Competent and Diligent Representation, Scope of Representation and Allocation of Authority, Communication, Fees, Confidentiality, Safekeeping Property, and Declining or Terminating Representation:

| | Total Votes | Percent |
|---|---|---|
| Yes | 7,688 | 20.00% |
| No | 30,748 | 80.00% |

Question B. Conflicts of Interest: Multiple Clients in the Same Matter:

| | Total Votes | Percent |
|---|---|---|
| Yes | 7,312 | 19.02% |
| No | 31,128 | 80.98% |

Question C. Other Conflicts of Interest:

| | Total Votes | Percent |
|---|---|---|
| Yes | 7,153 | 18.68% |
| No | 31,138 | 81.32% |

Question D. Prohibited Sexual Relations, Diminished Capacity, and Prospective Clients:

[12] STATE BAR OF TEXAS, GUIDE TO THE ISSUES.

[13] Texas Bar, http://www.texasbar.com (follow link next to "For results of Referendum 2011, please click here [PDF]") (last visited Feb. 23, 2011).

| | Total Votes | Percent |
|---|---|---|
| Yes | 10,617 | 27.69% |
| No | 27,731 | 72.31% |

Question E. Advocate, Law Firms and Associations, Public Service, and Maintaining the Integrity of the Profession:

| | Total Votes | Percent |
|---|---|---|
| Yes | 8,563 | 22.33% |
| No | 29,787 | 77.67% |

Question F. Counselor, Non-Client Relationship, Information About Legal Services, and Severability of Rules:

| | Total Votes | Percent |
|---|---|---|
| Yes | 8,788 | 22.90% |
| No | 29,582 | 77.10% |

## IV. CONCERNS WITH THE PROPOSED RULES

The conflict of interest rules proposed under ballot questions B and C seemed to be the hardest parts for Texas lawyers to swallow. The easiest, though only getting 27% of the vote, was the "no sex with clients" rule. The criticism of the proposed rules ran the gamut from "rushing to get something to vote on" to "too much cross-reliance on other rules" to "problematic terminology and definitions." Members of the bar felt that the proponents of the proposed rules were eager to have the rules embraced without concern for the for the lawyers who would be guided by them.

The proposed rules encompassed interpretative comments that would be ushered in with the rules if the amendments passed. The fact that members of the bar were not allowed to vote on the comments to the rules disturbed many. Some lawyers felt that a game of "hide the ball" was taking place—the rules were being voted on, but the real thrust was hidden in the comments. Over two-thirds of the language in the proposed rules was in the comments.

Various organization and associations published commentaries and took positions of support or no support for the proposed rules. Still others, gave support for parts of the rules and thought that a piece-meal adoption would be better than nothing at all. Further, some lawyers felt that the proposed rules were a condescension to their already good judgment. The feeling that because Texas lawyers have been guided by the same rules for over 20 years seem to be the driving force behind the proposed amendments; the need to "catch-up" with the rules in other jurisdictions seemed to be all-consuming.

## V. CONTENTMENT WITH CURRENT RULES

In light of the overwhelming majority of "no" votes on the proposed amendments it seems that Texas Lawyers are content with the current disciplinary rules. The reason for this display of contentment is motivated by one of the same factors which prompted the amendments: 20 years of precedent. The courts in Texas have been conducting trials and delivering opinions with the current set of rules in mind. If the proposed amendments were accepted, 20 years of case law would be subject to question or worse, overruled.

The current rules have been flexible enough to guide Texas lawyers for the last 20 years. Proponents of the current rules feel that Texas lawyers do not need amendments to tell them not to trade sex for services. Further, the current rules allows for a bit of common sense to be injected when determining whether representing multiple clients in the same suit will present a conflict of interest. The proposed amendments to the conflict of interest sections seek to define when a conflict of interest exists, as opposed to allowing the lawyer to use his or her own judgment and govern themselves accordingly.

## VI. CONCLUSION

Texas lawyers are committed to setting high standards for client representation. Under the current set of rules those high standards can be exhibited in a flexible way that ensures a positive outcome for both client and their attorneys. The inflexible set of proposed amendments would compromise the services that Texas lawyers provide to their clients. Texas lawyers were not satisfied with the quick fix proposed in the referendum. Thus, the amendments have been sent back to the drawing board—for now.

# PLANO Seminar
# Louisiana Ethics

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# What is an “ethic”?

- Ethics can be defined as a set of moral values which govern the actions of a group of professionals.
- A code of ethics is a set of principles of conduct within an organization that guide decision making and behavior. The purpose of the code is to provide members and other interested persons with guidelines for making ethical choices in the conduct of their work. Professional integrity is the cornerstone of many employees' credibility. Members of an organization adopt a code of ethics to share a dedication to ethical behavior and adopt this code to declare the organization's principles and standards of practice.

# Sources of Louisiana Ethics Laws

- Louisiana Rules of Professional Conduct (www.lasc.org)
- Louisiana Attorney Disciplinary Board Decisions (www.ladb.org)
- Model Rules of Professional Conduct (promulgated by the ABA) (www.americanbar.org)

# To Whom Do We Owe "Ethics"

- Client
- Court
- Opposing Counsel
- Opposing Party
- Related Parties in a Transaction
- Potential Beneficiaries

# Case Example No. 1 (2006)

Attorney represents family in regards to a mineral lease and a canal use agreement. Attorney prepares an agreement providing for payment of 25% of all monies collected on the canal use agreement as long as the agreement was in effect. The family believed the 25% payment was a one-time fee and not an ongoing contingency fee arrangement, and stopped payments. Family argued that the attorney performed limited work by examining the lease documents and witnessing the signing of the documents, such that the fee was not warranted. The disciplinary charges related to:

(1) An unreasonable and excessive fee;

(2) Failure to give proper written notice of the contingency fee;

(3) Failure to advise right of independent counsel for fee dispute, and requesting that money be paid directly to attorney by 3rd party.

# Outcome

LADB finds that charges should be dismissed and the LASC affirmed.

- The fee was not unreasonable based on the uncertainty of future work related to the transaction.
- The family was provided with sufficient notice of the fee arrangement.
- The request for payment of the fee directly by the oil company was not a violation because he was not attempting to acquire an ownership interest or otherwise collect money that he was not entitled to obtain.

# Case Example No. 2 (2001)

Attorney involved in various business transactions with client with whom he also had a friendship. On investment into an oilfield waste disposal facility, as business partners, the attorney entered into a stock transfer agreement with the client as the client faced bankruptcy. The stock was transferred in exchange for removing the client from the guarantees and debt of the business. Client always expected that after his financial troubles were over, the attorney would transfer the stock back to him, and the attorney did not transfer the stock.

# Outcome

- "Technical Violation" in that attorney did not recommend that the client seek independent counsel, but court found as a technical violation because client a sophisticated business man and there was a friendly relationship between them, such that the client should have known to seek counsel.
- No violation of the safekeeping rule because the attorney technically owned the stock and thus was not "safekeeping for the client"

# Key Issues

- Contingency Fee Disputes (Rule1.5)

  A fee may be contingent on the outcome of the matter for which the service is rendered . . . . A contingent fee arrangement shall be in writing signed by the client. . . . Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

# Key Issues

- Conflict of Interest (Rule 1.8)

A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client:

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

# Key Issues

- Rule 3.3: Candor Toward the Tribunal
- Rule 3.4: Fairness to Opposing Party and Counsel
- Rule 4.1: Truthfulness in Statements to Others
- Rule 7.2: New Louisiana Lawyer Advertising Rules

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