

Minutes of the  
Oyster Lease Damage Evaluation Board  
February 10, 1999

A meeting of the Oyster Lease Damage Evaluation Board was held on Wednesday, February 10, 1999, at 9:00 a.m. in the Mineral Board Docket Room, Fourth Floor, State Land and Natural Resources Building, Baton Rouge, Louisiana.

The meeting was called to order by the Chair, Vivian Guillory, and roll was taken.

Board members present:

Vivian B. Guillory, ALJ, Chair

Phillip E. Boydston, Burlington Resources, representing Mid-Continent Oil and Gas Assn. and Louisiana Landowners Assn.

Don Briggs, representing LIOGA and Louisiana Landowners Assn.

Ralph Pausina, representing the Oyster Dealers and Growers Assn.

Board members absent:

Mike Voisin, representing the Louisiana Oyster Task Force

DNR staff present:

Robert D. Harper, Undersecretary

John Waitz, Staff Attorney

Rachel Sweeney, Coastal Restoration Division

Cheryl Brodnax, Coastal Restoration Division

Carolyn Edwards, Executive Assistant

Others present:

Dr. Ed Cake, Gulf Environmental Associates

Thomas L. Bradley, BCATS

Noel V. "Bud" Brodtmann, Consultant, EPL

John Cirino, Cirino Consulting Services

Mrs. Guillory did not have any opening remarks.

Mrs. Guillory asked for a motion to approve the minutes of the January 5, 1999 meeting. Motion was made by Mr. Briggs and seconded by Mr. Boydston. Minutes approved.

Mr. Robert Harper was called on to discuss the Board's budget. Mr. Harper introduced himself. He stated the damage evaluation board has no budget. Mr. Harper said that when the Legislation went through back in 1995, it was never the intention that the Board become an obligation of the State General Fund of the State of Louisiana. It was always discussed that the Board was going to be a board funded by self-generated revenues derived from the oil and gas industry and the oyster industry.

Mr. Harper said DNR has made a provision in the Office of the Secretary budget to pick up about \$20,000.00 of miscellaneous income. Ms. Edwards' salary is coming out of the State General Fund. Mr. Harper's salary is coming out of the State General Fund. Ms. Sweeney's salary is coming out of the Coastal Wetlands Trust Fund. Ms. Brodnax's salary is coming out of the Coastal Wetlands Trust Fund and Mr. Waitz's salary is coming out of the State General Fund and Ms. Guillory's salary is being paid with the Administrative Law Judge. We made a \$10,250.00 deposit in the Administrative Law Judge on July 1 of the fiscal year and as they do work for us, we are billed \$85.00 an hour and so far, as of January 8<sup>th</sup>, we've gotten \$2,465.00 worth of credit against our \$10,250.00 deposit.

Mr. Harper said that generally boards of this nature exist on their own self-generated revenues. Mr. Harper said an effort could be made to insert General Fund money into the board by a minimum, if that is the route the Board wants to take. Mr. Harper said if the board wants to try to get General Fund money, the board needs to write a letter to Mark Drennen requesting General Fund money be put in DNR's budget to fund this program.

Mrs. Guillory asked Mr. Waitz to follow up on legislative matters. Mr. Waitz said last meeting Mr. Voisin asked him to look into some things. One was to see if board members shall be appointed by the individual members. Mr. Waitz met with Secretary Caldwell. Secretary Caldwell feels like the Board needs to leave it like it is where the Board nominates and the Governor appoints. This way the Governor has the right to remove the member from the board if the board member is not cooperating. Secretary Caldwell said if you wanted to sponsor a bill, he would not oppose it, but he would like to leave it as it is. The second issue that Mr. Voisin brought up was in the rules as to whether or not an oyster fisherman had to have a written affidavit from the oil and gas industry prior to filing a claim with the board. Mr. Voisin is of the opinion that they do. Mr. Waitz is of the same opinion.

Mrs. Guillory moved on to the next agenda item, discussion of procedures for the hearing on March 4, 1999. Mrs. Guillory said it will be conducted like an administrative hearing. One issue that came up is the role of DNR in the hearing. Mrs. Guillory's opinion is that DNR would not participate in an executory session that the board might have. However, the counsel for the board, Mr. Waitz, does participate. Ms. Sweeney met with Secretary Caldwell regarding the role of DNR in the hearing. Ms. Sweeney said Secretary Caldwell feels DNR should not have a role in final determinations. Ms. Sweeney said Secretary Caldwell feels DNR's role should be in the Secretary's review of the Board's finding in the event that he had technical questions. Mr. Pausina asked about the procedures for the hearing. Mrs. Guillory and the Board discussed the procedures for the hearing.

Deferred Item VI, "Secretary's Approval of Uniform Evaluation Methods" until Mr. Hanchey arrives.

Ms. Sweeney was called upon to discuss re-certification and certification of biologists. Ms. Sweeney discussed re-certification of biologists and certification of a new biologist. Eight biologists on the list from last year have applied for re-certification. Summary of qualifications of the biologists was passed out to the Board. A motion was made to accept re-certification of eight applications and one

application for certification. Mr. Briggs seconded. Motion passed. The Board certified Mr. Cirino and re-certified the other eight biologists. Ms. Sweeney asked Ms. Edwards to make a new list of biologists for this year and send to the Board.

Ms. Sweeney said that Mr. Voisin noted at the last meeting that at this time of re-certification they would have three individual biologists from Steinman and Associates and two biologists from Gulf Environmental. Ms. Sweeney said Mr. Voisin stated some concerns that his perception is that certain firms or biologists are more oyster oriented versus oil and gas oriented and that he was concerned that with three biologists from one firm and two from another firm that it would not necessarily be a representative list and he asked us to consider the idea of listing firms rather than individuals. Ms. Sweeney said she talked with Secretary Caldwell and reviewed the statute and it rules there is not necessarily prohibition against using a list of firms rather than a list of individuals, but the statute and the regs are both pretty clear that these are individual biologists and it says the Board shall maintain a list of individual biologists. Secretary Caldwell's feeling at this point was that he does not see that it has caused a problem. He would rather maintain a list of biologists as we have done, rather than go to a list of firms and that in the event that either the Board or the Department felt like it had turned into a problem, then we would re-address that. Mr. Boydston asked that this issue be deferred until the next meeting when Mr. Voisin would be present. Mrs. Guillory agreed. Mr. Voisin's concerns deferred until the next meeting.

Ms. Brodnax was called upon to discuss the status of the workshop. Ms. Brodnax said at the last meeting that Mr. Voisin volunteered his assistants for coming up with a format for the workshop, potential agenda items and topics of discussion. Ms. Brodnax met with Mr. Voisin last Monday. The list of potential topics of the workshop have been mailed to the Board and the biologists. The list of potential topics was passed out. This list was discussed at length. It was agreed that any potential topics be sent to Cheryl Brodnax. Mr. Boydston made a motion to have the workshop. Mr. Pausina seconded. Motion passed.

Dates for workshop were discussed. Mr. Pausina asked Ms. Sweeney to explore possible Sea Grant funding options for the workshop.

Mrs. Guillory said she was getting motions, opposition to motions. Mrs. Guillory asked the Board if they wanted to be involved in subpoenas. The Board wants Mrs. Guillory to handle.

The Board discussed next meeting date. April 14, 1999, at 1:30 p.m. was suggested for the next regular meeting of the Board.

Mr. Pausina had issue about what the procedure would be for any suggested changes to the Uniform Evaluation Methods. Agreed to put this issue on the agenda for the next meeting.

Mrs. Guillory asked for motion to adjourn. Mr. Briggs made a motion. Mr. Pausina seconded.

Meeting adjourned.