

Minutes of the
Oyster Lease Damage Evaluation Board
July 27, 1998

A meeting of the Oyster Lease Damage Evaluation Board was held on Monday, July 27, 1998, at 2:30 p.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 & Gas Assn. and Louisiana Landowners Assn.

Don Briggs, representing LIOGA and Louisiana Landowners Assn.

Ralph Pausina, representing the Louisiana Oyster Dealers & Growers Assn.

Mike Voisin, representing the Louisiana Oyster Task Force

DNR staff present:

James R. Hanchey, Deputy Secretary

John Waitz, Staff Attorney

Darryl Clark., Coastal Restoration Division

Carolyn Edwards, Executive Assistant

Others present:

Noel V. "Bud" Brodtmann, Jr., President, EPL

Dr. Edwin W. Cake, Jr., CEO and Oyster Biologist, Gulf Environmental Associates.

Dr. Ronald H. Kilgen, Fisheries Scientist and Environmental Consultant

Sarah Voisin, Motivati Seafood

Frank Jurisich, Oysterman

Mitchell Jurisich, Oysterman

Mrs. Guillory asked to move Agenda Item No. 3, Hearing of Claim, to Number 1. Mr. Voisin so moved and the Board unanimously agreed.

Mrs. Guillory began with the request of Louisiana Land and Exploration Company (LL&E) to arbitrate the oyster damage claim of Mitchell and Frank Jurisich, and gave the claim Docket Number 98-001. She said the rules didn't provide for a full hearing at this time, but she wanted to give both sides an opportunity to present their surveys and discuss this initial part of the arbitration. She called for LL&E's representative, but they did not have one present. Mr. Waitz said that Dr. Ron Kilgen, LL&E's biologist, was in attendance. Mrs. Guillory said the evidence provided by LL&E to the Board would consist, therefore, of a June 25, 1998 Preliminary Request for Arbitration, a map, Dr. Kilgen's oyster lease assessment, a written opening statement to be submitted into the record, and a letter from

Dr. Kilgen in response to Mr. Brodtmann's survey.

Mr. Voisin asked Dr. Kilgen if he was prepared to make any statements for LL&E or just answer questions. Dr. Kilgen responded that he was present just to answer questions.

Mrs. Guillory then asked Mr. Mitchell Jurisich if he had any comments relative to the evidence that was presented by LL&E.

Mr. Jurisich expressed his dissatisfaction with the way Dr. Kilgen had done the survey work in the proposed pipeline area. He said he would like to have someone else do another survey. He also proposed an alternate route for the pipeline that would be just as short as the proposed route but would hurt hardly any oysters.

Mrs. Guillory asked Mr. Jurisich if he had any additional comments to make or had any written documents he wished to submit. He said he'd like to have LL&E put up a million dollars if they were going to run the pipeline where they proposed. Mrs. Guillory explained the purpose of the Board under the statutes and the regulations was to determine an amount that needs to be placed in escrow until the work is done and until further information comes in as to the actual damages. Mr. Jurisich said he understood this and thought the escrow amount should be a million dollars. He distributed copies of a map showing the alternate route he proposed the pipeline take.

Mrs. Guillory asked Mr. Waitz what the damages were estimated to be by Dr. Kilgen in his oyster lease damage assessment. Mr. Waitz said \$53,609.00

Mr. Frank Jurisich said he understood that if damages went over \$53,000, the company will have to pay an additional amount, but his concern is that this won't happen and he feels the \$53,000 figure is too low.

Mrs. Guillory told Mr. Jurisich that there would be a full determination by the Board, pursuant to the rules and statutes, at the end of this process to take a look at that and he would have an opportunity to disagree or make additional comments at that time.

Mrs. Guillory asked Mr. Brodtmann if he was involved with any of the parties in the claim. He said he had provided a memo to Mr. Jurisich's attorney and had given a copy to Mr. Waitz. He said this was mis-characterized earlier in the meeting as an assessment. It was not an assessment, but a review of Ron Kilgen's data and the assumptions he made in coming up with his opinion of possible damage. He said he did not agree with Dr. Kilgen's restriction of the impact zone to a 100-foot wide strip or the sack count. Mr. Brodtmann said his review was done for Mr. Jurisich at the request of Mr. Jurisich's attorney, Mr. Pivach.

Mr. Voisin asked Mr. Brodtmann what dollar figure he had come up with. Mr. Brodtmann said he took into account two years of future production on the lease. The standing crop loss potential for this

year as a result of the pipeline construction is \$250,000 and he predicted that same amount for the next two years in addition to that. He added that he didn't know if LL&E's \$53,000 figure included loss of standing crop for an additional two years.

Mrs. Guillory said the Board would review this large monetary discrepancy.

Mrs. Guillory then swore in Ms. Carolyn Edwards, Secretary for the Board, to answer a few questions. She mentioned that Ms. Edwards is the only individual who has the list of certified biologists' names from which three are selected for each claim filed. She asked if she knew the names of the first three biologists who would have come up for selection. Ms. Edwards responded that she did. Mrs. Guillory asked Ms. Edwards if she knew how the order of those names was determined. Ms. Edwards said the names were written on a piece of paper, each one was cut out, numbered, folded and drawn out of a box. Mrs. Guillory asked who was with her when this was done. Ms. Edwards responded that Mrs. Guillory and Mrs. Angela Wilkinson, Director of DNR's Human Resources Division. Mrs. Guillory said that LL&E had chosen Dr. Kilgen from the list and asked if his name was in the first three on the list. Ms. Edwards responded, "no," because there had been one other claim filed previously and Dr. Kilgen's name was actually in the second three on the list.

Mr. Voisin asked Mr. Brodtmann what he considered to be an adequate width for the impact zone if he disagreed with Dr. Kilgen's restriction of 100 feet.

Mr. Brodtmann said it would vary with particular locations, but he thought a 1000-foot limit was more appropriate. This is a requirement for assessments set by Wildlife and Fisheries because they are aware that the impact area could be that wide.

Mr. Voisin asked if that was 1000 feet on either side or both sides.

Mr. Brodtmann responded that it depends on tidal currents, flows, weather conditions, etc. He said in coming up with his estimates he uses the figure of 1000 feet wide with a decreasing mortality level starting with 100% along the direct pipeline impact, and decreasing out for about 1000 feet such that the average mortality in that 2000-foot wide strip would be 20 to 30% of the standing crop.

Mr. Voisin asked if he had ever seen the impact area to be just 100 feet.

Mr. Brodtmann responded, "never."

Mr. Voisin asked him what his best "guesstimate" of the impact area would be based on his experience in that area. Mr. Brodtmann said for estimation purposes at this stage of the game, allowing 1000 feet on either side of the pipeline for total impact is a good approach.

Mr. Briggs asked if improved technology in laying pipelines would change any of this.

Mr. Brodtmann said it definitely could. With containment of silt, damages could be greatly reduced.

Mr. Briggs asked Dr. Kilgen if he was aware of what type of system was going to be used.

Dr. Kilgen said it was his understanding that plans are to have a staging area either at the well location or at the ending point of the pipeline, do all the welding of the pipelines in one spot, and float the pipeline on styrofoam floats across to the other end, bore into place, remove the floats and pass along it with a small barge with a jetting apparatus with some curtains surrounding the barge to minimize the outflow of any suspended silt. With that in mind, the discussion with the LL&E people was that they thought the damage would be limited to the width of the barge. Dr. Kilgen suggested using at least 100 feet as a corridor. It was his understanding that they would do all the things necessary to minimize the impact - not having a large vessel going across the area at all because it is fairly shallow.

Mr. Voisin asked Dr. Kilgen what was the worst scenario he had ever seen insofar as impact is concerned. Dr. Kilgen said, from this type of operation, a little over 100 feet without any protection whatsoever

Mr. Clark asked Mr. Brodtmann for a clarification. He said Mr. Brodtmann was recommending an impact area of 1000 feet on both sides of the flow line because of the currents, etc. in the area, yet in his July 24th memo he stated, "it should be noted the 1000-foot width of the study area, that is 500 feet on either side, is within the distance from the construction likely to be impacted by varying degrees by flow line installation." He said Mr. Brodtmann also mentions Wildlife and Fisheries requiring 500 feet on either side. He asked Mr. Brodtmann if he was changing the 500 foot width on either side, giving a total of 1000 feet, to a 2000 foot width today.

Mr. Brodtmann responded that he had gotten the requirements mixed up. He said the 2000 feet would be if they were going through the area with deep draft vessels. Then, depending on the water depth, they would have to go out 1000 to 1500 feet.

Mr. Clark asked Dr. Kilgen if the Department of Wildlife and Fisheries requires a study to go out 500 feet on either side of the flow line.

Dr. Kilgen said they want notification, and if it's crossing the lease, they want the survey out to 500 feet.

Mr. Brodtmann clarified that there is no hard and fast rule by Wildlife and Fisheries. Some leases are not even being crossed and/or are 1500 feet away from the pipeline or flow line, but Mr. Fred Dunham will require an assessment. He is the one who goes over the quad sheets and decides which leases he wants to see in an assessment.

Mr. Voisin asked how long the Jurisichs had been in the oyster business. Mr. Frank Jurisich said it had

been since his graduation from high school. Mr. Mitchell Jurisich answered about 60 years. His mother and father were at the location in question and he was born there. It has been a lifelong livelihood for him. He said he is concerned because LL&E is going to run their pipeline about one foot from one of his particularly valuable reefs - one of the best reefs in the area. It's about a four or five acre lease. Mr. Voisin asked if the reef is mostly a half-shell reef. Mr. Mitchell Jurisich said it goes from half-shells to shucking oysters to "anything." Mr. Voisin asked if he used it to bed on it. Mr. Jurisich answered that it's a combination. Mr. Voisin asked if he had any estimates as to what he harvested from it annually. Mr. Jurisich said he didn't know, but it was a very valuable lease. He said all he wanted out of this hearing was for LL&E to change the route of their line.

Mr. Pausina asked Dr. Kilgen how the pipeline was going to be floated to the lease - push it off the barge or pull it with something. Dr. Kilgen said they were going to use the 25 to 30 foot boats with about a three foot draft that pulls the pipe.

Mr. Voisin asked what percent of their business the lease in question represents. Mr. Frank Jurisich said close to 50 percent of what they do. He said the area is always open and grows a beautiful oyster. It's a convenient area right behind their house, and not expensive to operate in.

Mr. Voisin asked Mr. Brodtmann what is the cost per sack in that area. He said \$12.00 a sack net after costs.

Mr. Voisin asked if there was a certain time of the year Mr. Jurisich used these leases. He responded, "No." Mr. Frank Jurisich added that, according to Dr. Melancon's salinity map, the leases were always in the always producing area.

Mr. Voisin moved that the Board go into executive session to take Docket No. 98-001 under advisement for discussion.

Mr. Boydston asked to be recused from any deliberations. He was allowed to stay for the discussion, but would not be allowed to participate.

When the Board went back into regular session, Mr. Briggs made a motion that the bond for Docket No. 98-001 be set at double the biologist's report, or \$107,218. Mrs. Guillory called for a vote. Mr. Pausina was the sole opposition and asked if there was to be discussion on the motion. Mrs. Guillory called for discussion.

Mr. Pausina said, "The amounts we're talking about here have nothing to do with the oysters within that 100-foot area. There was no consideration for the bottom, there's no explanation how the bottom is going to be left after the activity, no explanation as to when the activity will be over, and no consideration for indirectly impacted areas which the biologist mentioned in his report." He believed, therefore, the \$107,218 amount to be inadequate.

Mr. Voisin agreed with Mr. Pausina that the Board was missing a lot of information, but seconded the motion to move in the spirit of the legislation, which is to bring people together to move the oil and gas industry forward, but not abuse the oyster industry. He believed that in seconding the motion it creates a scenario where the Board is looking at the conservative side of the approach in terms of missing information that the Board has not yet requested the certified biologist to give, but thought the Board may or may not cover it given that the Board has doubled what the certified biologist has recommended. He understood and appreciated Mr. Pausina's concerns but, at this point, thought it would be healthy to move the issue forward. The worst case scenario would be that in the end the final biological survey would come out worse than \$107,000 and then LL&E would have to put up more money.

Mr. Pausina said Secretary Caldwell had directed the Board not to come up short; to get as much as they could. Mr. Pausina suggested that the amount is inadequate.

Mrs. Guillory asked if there was a substitute motion, but none was offered. She asked for a vote on the motion to set the amount at \$107,218. It passed with opposition only from Mr. Pausina.

Mrs. Guillory asked for the Board to set a date for the next meeting. It was decided that it would be Wednesday, August 26th.

Mr. Voisin asked that the Board send to the oil and gas operator a copy of the map presented to it by Mr. Jurisich, indicate the alternative route and ask them to consider that as an alternative.

Mrs. Guillory said that Mr. Waitz would prepare the cover letter for this.

Mr. Boydston expressed a need for putting together a book on the process of what is required to file a claim and have the biologists assist in disseminating it to operators and oyster people. He said the Board needs to use it as a process to find out what data, etc. should be included in the initial biological survey and applications. It needs to contain the statute, regulations, etc. so there is no confusion as to what the process is.

Dr. Cake asked if some of the matters that didn't come before the Board were going to come out in draft form before the next meeting; specifically, the procedures the biologists will use.

Mr. Clark said Dr. Cake had submitted some comments concerning the sampling methods. At the last meeting they were semi-finalized. They were disseminated by Carolyn Edwards to Board members and the oyster biologists.. This elicited a response from Mike Rayle of Steimle and Associates. He said he had comments on some of those comments and could prepare something for the next meeting.

Dr. Cake said he thought the Board was going to come up with another draft so that the biologists could look at it and come back before the Board.

Mrs. Guillory said she thought the Board had sufficient information and would probably digest it and resolve some conflicts with it.

Mr. Hanchey observed that the process has had a tremendous amount of input from a lot of people and thought it should be moved toward closure now. He said Darryl and some others need to go through all of the information and produce a single set of guidelines that the Board can take action on. If there are any problems, those can be isolated; otherwise, they can keep being sent out and will continue to get five different kinds of comments each time. If necessary they can be circulated back to the biologists one last time and try to come up with something the Board can approve. He noted the Board was at somewhat of a handicap in considering the claim at hand because it hadn't completed the process yet.

Mr. Clark said he would be willing to put the pertinent comments he thought should be added to the sampling methods.

Mr. Voisin agreed with Mr. Hanchey that the Board is to a point where it has to make a decision.

Mrs. Guillory called for a motion to adjourn. The motion was made by Mr. Briggs and seconded by Mr. Boydston. Meeting adjourned.