

CONTENTS

OIL AND GAS CONVEYANCING AND LEASING

IN ALABAMA.....Harry Cohen 1

Introduction..... 1

Conveying A Fee Simple in Oil and Gas..... 2

Classification of Oil and Gas Leases..... 7

Formalities, Recordation and Construction of  
Instruments Conveying Oil and Gas Interests..... 9

Construction of Oil and Gas Leases--Abandonment,  
Forfeiture, Express and Implied Covenants..... 16

The Mineral-Royalty Deed Distinction..... 18

The Effect of Oil and Gas Leases on Transfers  
of Land..... 19

Cotenancy Problems..... 20

The Ownership of Oil and Gas Under Right of Ways,  
Highways and Streets..... 25

The Ownership of Water Beds in Alabama..... 27

Leasing State Lands..... 28

Conclusion..... 29

A SURVEY OF FLORIDA OIL AND GAS LAW AND  
RELATED LAND TITLE CONSIDERATIONS....G. Thomas Smith 31

Nature of Interest in Oil and Gas..... 31

Conservation Laws..... 34

Excise Tax on Production..... 36

Ownership of Minerals Under Roads..... 38

Conveyancing Problems..... 39

Minors and Incompetents..... 39

Trustees..... 40

Personal Representatives..... 41

Unincorporated Associations..... 42

Corporations..... 44

Married Women..... 44

Conveyancing Formalities..... 45

Tax Titles..... 46

Laws of Descent and Distribution..... 49

Life Estates..... 57

Children..... 57

Severance..... 60

Title Examination Problems and Techniques..... 61

Conclusion..... 66

OFFSHORE REVENUE SHARING.....Ray T. Sutton	67
Louisiana Drilling, Production, and Tax Revenues Declining.....	67
Mineral Leasing Act of 1920:	
Inland Federal Public Lands v. Tidelands.....	68
Mineral Resources A Capital Asset.....	70
Coastal States Need Equal Treatment.....	71
Energy Development v. Environmental Protection.....	71
International Offshore Development.....	72
Conclusion: Fair Play for Coastal States.....	75
FARMOUT AGREEMENTS.....Shirley C. Friend, Jr.	77
Area Included Within Agreement.....	80
Test Well.....	80
Earned and Retained Interests.....	83
General Provisions.....	86
RECENT DEVELOPMENTS OF INTEREST	
TO THE LANDMAN.....W. P. Wooten	91
PLANO Progress Report.....	91
PLANO's Environmental Committee.....	91
Expertise available.....	91
Drilling recommendations: urban lands and waterbottoms.....	92
OCS environmental impact statement.....	92
Gas shortage.....	92
PLANO's Speaker's Program.....	92
Explain industry environmental concern.....	93
Alabama and Florida.....	93
Four speeches.....	93
Sample Speech: Marine Exploration and Drilling....	93
The energy crisis.....	93
Majority of U.S. reserves under the Outer Continental Shelf.....	94
Importation not the answer.....	95
Marine drilling.....	96
Santa Barbara oil spill: no permanent damage...	96
No negative impact on fishing industry.....	97
No negative effect on recreation.....	98
Safety devices.....	98
Zero-growth no answer.....	99
Proper incentives to industry and positive attitudes the answer to oil crisis.....	100

Afterthoughts.....	101
Use press and media.....	102
People eager to hear from industry.....	102
PLANO's Coordination with API.....	103
API's Florida program.....	103
Cooperation.....	103
Conclusion.....	104
GOVERNMENTAL AND REGULATORY ASPECTS OF THE	
ENERGY CRISIS.....John A. Carver, Jr.	105
The natural gas crisis.....	105
Extended regulation.....	105
Modified regulation on "new" gas.....	105
Deregulation.....	105
Sources of energy crisis.....	106
No crisis.....	106
Johnson administration responsibility.....	106
Nixon administration responsibility.....	106
Natural gas underpricing stimulant to growth.....	107
Governmental reorganization.....	108
Role of judiciary.....	108
Critique of <u>Wilderness Society v. Morton</u> .....	109
N.E.P.A.'s impact on energy decisions.....	110
<u>Calvert Cliffs'</u> .....	110
Present issue: Executive or legislative	
challenge to judicial dominance.....	111
National interest: cheap energy or energy	
independence.....	112
Executive power to act on national security	
grounds.....	113
Illegal Presidential acts subsequently certified	
by Congress.....	114
Crisis in producing states: a La. case.....	114
La. Public Service v. F.P.C.....	114
La. Power & Light Co. v. United Gas Pipe	
Line Co.....	115
F.P.C. v. La. Power & Light Co.....	115
F.P.C. Opinion & Dissent.....	115
Issues: damages and certifications.....	116
Producing v. Consuming State: the S. Ct. view...	117
Need for uniform federal regulation.....	118
National Interest Coincides with Producing	
States' Interest.....	119

Irreplaceable Nature of Natural Gas Resource	
not considered by Court.....	119
Congress recognized legitimate interests of	
the States in conservation of natural gas.....	120
States may have vital resource management role...	120
Energy conservation, balance and equity	
the issues.....	121
COASTAL ZONE MANAGEMENT AND	
THE PETROLEUM INDUSTRY.....J. Arthur Smith, III	123
Introduction.....	123
Coastal Zone Management Act of 1972: Analysis...	123
Historical Background of Act.....	124
Rapid growth of coastal areas.....	124
Pollution and environmental neglect.....	124
National ocean policy urged.....	124
Coastal and ocean concern yielded act.....	124
Traditional coastal zone management -	
inadequate, shortsighted, single	
oriented, "tacked-on" regulations.....	125
Overview.....	125
State government focal point.....	125
"Coastal zone" definition.....	126
Substantive Provisions.....	127
Annual planning grants to states.....	127
Qualifications for grant.....	127
Administrative grants.....	128
Procedural requirements.....	128
Land and water use controls.....	129
State participation not <u>required</u> by act.....	130
Estuarine sanctuaries.....	130
Advisory committee.....	130
Louisiana's Coastal Zone Planning	
and Management.....	130
La. Advisory Commission on Coastal and Marine	
Resources created in 1971.....	130
Interest groups represented.....	131
Technical presentations.....	131
Committee established in 1972.....	131
Public meetings.....	132
State Planning Office lead agency for coastal	
zone planning.....	133
Environmental management area suggested.....	133

Undisturbed wetlands cost: suggested addition..	134
Growth/no growth areas.....	134
Monitoring marsh engineering.....	134
Water quality enforcement.....	134
Coastal zone enhancement by engineering.....	135
Dredging regulations: expand and increase enforcement.....	135
Review of navigation projects.....	135
Creation of coastal zone management agency.....	136
Coastal Zone Management and the Oil Industry.....	136
Large industry role in coastal zone planning...	136
Advantage to industry of prior and central planning.....	136
Increased regulation of industry.....	136
Positive elements of growth plan.....	137
Pipeline canal survey.....	137
Offshore platform alternative uses.....	137
State's interests need representation.....	137
Federal dredging guidelines inappropriate for state.....	138
La. superport example of business/envirom- mentalist cooperation.....	138
Need for coastal zone management.....	139
INDEMINITY PROBLEMS IN THE OIL AND GAS INDUSTRY.....George B. Matthews	141
Express Indemnity Contracts.....	141
Implied Indemnity Obligations.....	147
Sample Forms of Indemnity Contracts.....	149
UNITED STATES OCEANS POLICY:	
PERSPECTIVE 1973.....H. Gary Knight	153
Introduction.....	153
Sources of United States Policy.....	156
Description and Discussion of Policy Objectives..	162
Non-Living Marine Resources.....	164
Areas Subject to Coastal State Jurisdictions.....	164
The Deep Seabed.....	170
Fisheries.....	174
Territorial Sea Breadth; Navigation and Over- flight on the High Seas and through Inter- national Straits.....	179
Freedom of Scientific Research.....	182
Protection of the Marine Environment.....	184
Conclusion.....	185

CURRENT DEVELOPMENTS IN OIL AND	
GAS FINANCING.....Edward C. Stanton, III	187
Introduction.....	187
Capital Requirements.....	188
One trillion dollars by 1985.....	188
23 billion in 1971.....	189
Chase Manhattan projections.....	189
"Capital branch" of industry.....	190
Techniques For Securing Capital.....	190
Increasing Debt Capital.....	190
Debt-equity ratio.....	190
Credit ratings and rates.....	190
Debt security rating tied to gas supply.....	191
Sale leaseback and production payment.....	191
Recent low rates on intermediate term debt..	192
Increasing Equity Capital.....	192
Current resistance.....	192
Purchase of own stock.....	192
Drilling Programs.....	192
Imaginative finance techniques.....	192
Utilized primarily by independents.....	192
68 million in 1966.....	193
419 million in 1969.....	193
Factors affecting funds available.....	193
Controlled Subsidiary Financing.....	194
400 million in 1972.....	194
Adverse reaction of market.....	194
Catalyst for new techniques.....	194
Direct Institutional Participation.....	195
Increasing institutional participation.....	195
Example of recent agreement.....	195
Variations.....	196
North Sea.....	196
Other Financing Needs and Techniques.....	196
Leverage leases and tax-exempt bonds.....	197
Tax-exempt bonds for pollution control.....	197
Tax-exempt financing to increase.....	197
Tanker financing.....	197
Increased Prices.....	197
Key to solution of "capital crunch".....	198
Problem of low earnings.....	198
Increased prices, increased drilling, increased production.....	198
Conclusion.....	199

RECENT JURISPRUDENCE.....	Archie Estess	201
Title of Land Subject to Irrigation Canal		
Right of Way.....		201
<u>Per aversionem</u> sale.....		202
Non-navigable canal like railroad.....		203
<u>Tucker</u> rule followed.....		204
Constitutional question of <u>Tucker</u> .....		205
Proposed solution.....		206
Indivisibility of Lessee's Obligations		
Under Oil and Gas Lease.....		206
<u>Broussard v. Amerada</u> : demand for lease cancellation on portion of tract.....		206
No Pugh clause.....		207
Lease not divided by inclusion of portion in unit.....		207
Lease cancellation rejected.....		208
Another Implied Obligation of Lessee.....		208
<u>Baker v. Chevron Oil</u> : servitude owner sues unit operator for negligence in servitude prescription.....		209
S. Ct. holds servitude prescribed.....		210
Chevron had no duty and was not negligent...		211
Express and implied obligation.....		212
Potential conflict for lessee.....		213
Use of Mineral Servitude.....		214
<u>Matlock Oil Corp. v. Gerard</u> .....		214
Plaintiffs argue that drilling through formation a <u>use</u> of servitude.....		215
Ct. held this not good-faith effort to establish production in unitized formation.....		216
Good Faith Dispute Regarding Royalty Payments....		217
<u>Wilson v. Sun Oil Co.</u> lessor sought lease cancellation. Refused tender of alleged insufficient payments by lessee.....		217
Ct. held no lease cancellation.....		217
Estoppel to Assert Improper Payment of Delay Rental.....		218
<u>Richard v. Tarpon Oil Co.</u> plaintiff sought lease cancellation for failure to pay delay rentals, mistakenly deposited to incorrect account by lessor's bank.....		219
Ct. held plaintiff estopped as he knew of incorrect payment and failed to inform lessee.....		220

<u>McDuffie v. Walker Revisited</u> .....	221
Farmout agreement.....	222
Assignment.....	223
Concursus proceeding.....	224
Hypothetical.....	225
Suggested non-recorded binding agreement....	227
Failure to Pay Production Royalties-	
Oversight as Justification.....	229
<u>Alvord v. Sun Oil Co.</u> plaintiff Alvord	
demanded lease cancellation from new	
unit operator, Sun.....	229
Alvord didn't sign division order through	
error, Sun failed to pay royalty.....	230
Review of jurisprudence.....	231
Failure to pay held justified.....	232
Not <u>active</u> breach where error.....	233
Failure to pay delay rentals compared with	
failure to pay production royalties.....	234
Unit operator.....	235
III Omen for Lessee in '73: <u>Hibbert v. Mudd</u> ....	236
"Awsome burden" of lessee to justify non-	
payment of royalty.....	237
Lessee lease cancelled.....	237
Author looks to Supreme Court.....	237
RECENT JURISPRUDENCE II.....George W. Hardy III	239
Energy Crisis and La.'s Natural Gas.....	239
State leasing discontinued.....	239
Leasing "interspersed" lands reserved.....	240
New rider on state lease form.....	240
Natural gas for intrastate market.....	240
Environmental clause.....	240
Pugh or "deferred development" clause...	240
Technical data disclosure by lessee.....	240
Intrastate marketing of gas required.....	240
After completion, 18 months allowed to find	
intrastate market.....	241
2nd well given 6 months additional.....	241
Lessee not required to sell intrastate if	
interstate terms better.....	241
Gas cap gas and blow down gas.....	241
Exception-emergency sales.....	242
Shut-in payments or extension.....	242



State aid to find purchaser.....	243
Quarterly reports required.....	243
Additional reserves.....	243
Mineral Board waiver.....	243
Interstate/intrastate swap-out.....	243
Lessee may process gas.....	244
Small impact of new provision.....	244
Restraint of trade problems.....	244
Tort or delictual problems.....	245
Conflict of contracts.....	245
Environmental Requirements.....	246
Compliance with state and federal law.....	246
Water quality standards, dredging, navigation.....	246
Timely notice to agencies.....	246
Waterbottoms.....	246
"Deferred Development" clause.....	246
Legal difficulties.....	247
Advantage ease further development oversight.....	247
Disclosure of Technical Data.....	248
Advance over 1966 form.....	248
Confidentiality.....	248
Public records act.....	249
Exception.....	249