

# **Committee on Resources**

## **Subcommittee on Energy & Mineral Resources**

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### **Statement**

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**TESTIMONY OF  
WILLIAM M. PETMECKY  
SENIOR VICE PRESIDENT  
SENECA RESOURCES CORPORATION  
REGARDING  
H.R. 3432  
ENERGY AND MINERAL RESOURCES SUBCOMMITTEE  
February 15, 2000**

#### **I. Introduction**

Chairwoman Cubin and members of the panel, I appreciate this opportunity to testify before you. My name is William Petmecky, Senior Vice President of Seneca Resources Corporation ("Seneca Resources"). I am pleased to be here today to represent the interests of Seneca Resources regarding compensation for drainage in the West Delta Field as set forth in H.R. 3432.

Congress has long recognized the need to compensate the State of Louisiana and its lessees for oil and gas drainage in the West Delta Field. This obligation and the duty to regulate offshore production in an environmentally sound manner in situations like West Delta were made law under Sec. 6004 (c) of P.L. 101-380, the Oil Pollution Act of 1990. Title IV of Public Law 105-83, the Department of Interior and Related Agencies Appropriations Act, 1998 acknowledged the obligation and called for compensation to be made. The purpose of my testimony is to discuss how H.R. 3432 will let Congress fulfill this long-standing obligation.

Seneca Resources and the State are innocent parties that suffered substantial economic loss when they were drained for many years by an offsetting federal lease at West Delta. Even though the drainage was improper and the Minerals Management Service ("MMS") controlled a mechanism to prevent this wrong, the Secretary of the Interior refused to take the customary action to stop it. Both Seneca Resources and the State pursued a number of measures to end the drainage, including the Governor's formal request to unitize, but were unsuccessful. The MMS refused in spite of the fact that in every one of well over 100 previous similar cases Federal/State units were formed. That cooperative development has occurred in all subsequent cases along the Louisiana boundary. The MMS refusal in this one instance in Louisiana was a deliberate and confusing reversal of existing federal policy.

When the MMS disputed the drainage occurrence and amounts, Congress authorized the appointment of an Independent Fact Finder and authorized funds to pay for this study, so as to get to the bottom of this matter. This Independent Fact Finder, under contract to the MMS, confirmed that drainage had in fact occurred and

determined its magnitude during the period under study. Since the Independent Factfinder's study covered just a three-year period, the \$34million obligation that Congress has recognized represents only a portion of the resources that were drained. Although drainage continued for almost a decade after the study was published, Seneca has not and would not make any claim for that subsequent drainage.

Congressmen Chris John and Billy Tauzin, through H.R. 3432, have developed a mechanism by which the government may meet its existing obligation to the State and its lessees. My testimony includes some background on the issue and discusses how H.R. 3432 will compensate the State and its lessees, including Seneca Resources, for oil and gas drainage in the West Delta Field.

## II. Company Overview

Seneca Resources is a natural gas and oil exploration and production subsidiary of National Fuel Gas Company ("National Fuel"). National Fuel, incorporated in 1902, is an integrated natural gas company with its corporate headquarters in Buffalo, New York. The company has three major business segments: exploration & production and other non-regulated activities, utility operation and pipeline & storage. Seneca Resources, headquartered in Houston, is active onshore in Alabama, California, Louisiana, Michigan, New York, Ohio, Pennsylvania, Texas, and Wyoming. In addition, we operate offshore platforms in the Gulf of Mexico off of Louisiana and Texas.

## III. History of West Delta 17/18

In August 1985, the State's lessees and Federal lessees began to produce a natural gas field in the West Delta region of the Outer Continental Shelf ("OCS") that underlies both Louisiana and Federal waters. In November of 1985, the State's lessees began to notify the MMS that a federal lessee was draining the West Delta field at the expense of the State's lessees-Officials at MMS and the Department of Interior ("DOI") disagreed with the lessees, the Governor of Louisiana and the Louisiana Congressional delegation regarding the availability of relief.

On April 17, 1986, Louisiana Governor Edwin W. Edwards formally notified DOI, pursuant to Section 8(g)(3) of the OCS Lands Act Amendments of 1986 (OCSLA) of common reservoirs in the West Delta blocks. When the MMS allowed an acceleration well to be placed on production, the State and its lessees filed a suit (April 25, 1986) against DOI, the MMS and the Federal lessee, seeking to compel the Secretary of the Interior into a unitization or other form of royalty sharing agreement. On May 22, 1986, the MMS changed its policy of cooperation (confirmed 30 May 86) and resorted back to the outdated Rule of Capture, only to the extent that it applied to an adjoining State's leases. On December 19, 1986, the Federal Court in the Western District of Louisiana held that at West Delta 17/18, the Secretary of the Interior was not obligated to cooperate under Section 8(g) of the OCSLA.

In a very similar case involving two federal leases, litigation was proceeding concurrently with that in the West Delta unitization, in the Federal Court in the Eastern District of Louisiana. In that case ([Clark](#)<sup>(1)</sup>) the MMS was actively asserting its authority to force unitization of adjoining federal leases to avoid the undesirable affects that were fostered by the application of an unmodified Law of Capture at West Delta. The Eastern District Court in that case held that "...the Conservation Manager (predecessor to the MMS) intended and was authorized to modify the Law of Capture..." and ruled that his "...decision to require unitization was a proper exercise of his authority."

To resolve the West Delta dispute between the MMS and the State, the DOI and Related Agencies

Appropriations Act of 1989 was enacted containing a provision (Section 117) that directed the Secretary of the Interior to appoint an independent fact finder to determine if drainage was actually occurring. On March 21, 1989, Rider Scott, the Independent Factfinder, filed the Third Party Factfinder Louisiana Boundary Study with Congress. The report found:

- The State and its lessees had suffered significant drainage of state natural gas and oil resources through the actions of the Federal lessees.
- Total dollar losses to the State and its lessees at West Delta 17/18, in market prices at the time of the drainage, was \$18,115,147.16.<sup>(2)</sup>
- 44% of the loss was suffered by the State.
- 56% of the loss was suffered by the State's lessees.

#### IV. Authorizations

Based on these findings, the Louisiana Congressional delegation sought and obtained a Congressional authorization of appropriations for compensation. OPA '90, under Section 6004(c), authorized the appropriation of sufficient funds, including interest, to the State and its lessees, for net drainage of oil and gas resources as determined in the Rider Scott study.<sup>(3)</sup> In its inclusion of corrective legislation in OPA '90, Congress adopted the environmentally sound policy confirmed by the U.S. Eastern District Court in Louisiana in the Clark case, thereby effectively overruling the holding in Louisiana vs. U.S.A., and again directed the MMS to employ "the cooperative development of an area" so as to prevent the harmful effects of unrestrained competitive production, including, among other things, "economic waste, environmental damage, and damage to life and property."

Two years ago, under Title IV of Public Law 105-83, Congress reaffirmed the obligation of OPA '90 and established a Fund from which to compensate the State and its lessees for the West Delta drainage. As stated in that law, a portion of this Fund was to be used "for payment to the State of Louisiana and its lessees for oil and gas drainage in the West Delta Field." Unfortunately, the Fund was never set up and the obligation remains unsatisfied.

#### V. Conclusion

Congress has twice acknowledged the need to bring this matter to a close. Now, with the legislation introduced by Chris John and Billy Tauzin and sponsored by 13 other House members, there is a means for achieving that goal.

#### VI. Overview of H.R. 3432

H.R. 3432 sets forth a simple mechanism for the Congress to honor its commitment to compensate the State and its lessees for drainage of oil and gas at West Delta without a direct appropriation. Under H.R. 3432, Congress would direct the MMS to grant the State and its lessees a credit in the payment of Federal offshore royalties until the government's obligation is fulfilled. From each dollar of royalty withheld, Seneca Resources would pay forty-four (44) cents to the State of Louisiana. Because Seneca Resources pays the MMS about \$15 to \$20 million a year in OCS royalties for production from some 18 leases each year, the entire settlement could be recovered in approximately two years.

It should be noted that the bill has the support of the entire Louisiana delegation as well as members from New York, Pennsylvania and Texas. Also, you will hear from Mr. Caldwell that the State of Louisiana strongly supports this legislation.

#### VIII. Closing

In summary, we are pleased that last year Congressmen John and Tauzin have introduced a bill which sets forth a method to compensate the State and its lessees for drainage in the West Delta Field. We recommend that this subcommittee approve this legislation. Madam Chair, I thank you for the opportunity to testify on this matter and would be pleased to answer your questions.

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1. <sup>1</sup> Clark Oil Producing Co. v. Donald P. Hodel, et. al.

2. <sup>2</sup> EDC, a State lessee, suffered no drainage losses because it also owned an interest in the Federal leases and, therefore, was excluded from the drainage calculation.

3. <sup>3</sup> The amount of compensation authorized is the amount determined by a Congressionally authorized third party fact finder, who set compensation at \$18,115,147.16, plus interest. The Senate Appropriations Committee Report on the FY 91 Interior Appropriations bill specified an annual interest rate of 8.0 percent. Interest continues to accrue at \$1,449,211.77 per year.

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