OFFICE OF CONSERVATION

STATE OF LOUISIANA

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OILFIELD SITE RESTORATION COMMISSION MEETING

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REPORT OF HEARING

HELD AT

BATON ROUGE, LOUISIANA

MAY 5, 2011

OFFICE OF CONSERVATION

STATE OF LOUISIANA

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OILFIELD SITE RESTORATION COMMISSION MEETING

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Report of the public hearing held by the Office of Conservation, State of Louisiana, on May 5, 2011, in Baton Rouge, Louisiana.

IN ATTENDANCE:

REPRESENTING:

Sarah Wagner, Division OSR Engineer

Bob Harper, Department of Natural Resources

Paul Frey, Commissioner for LLA

Don Briggs, Commissioner for LIOGA

Randy P. Lanctot, Commissioner for LWF

Michael R. Lyons, Commissioner for Mid‑Continent

OILFIELD SITE RESTORATION COMMISSION MEETING

MAY 5, 2011

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MR. HARPER:

Good afternoon. I would like to call the Oilfield Site Restoration Commission meeting of May 5, 2011, to order.

Would the secretary, please, call the roll ‑‑ excuse me ‑‑ the staff, please, call the roll.

MS. WAGNER:

Yes, sir. Please answer the roll when your name

is called.

Scott Angelle?

MR. HARPER:

Bob Harper serving for Scott Angelle.

MS. WAGNER:

Jim Welsh?

(No response.)

Paul Frey?

MR. FREY:

Here.

MS. WAGNER:

Don Briggs?

MR. BRIGGS:

Here.

MS. WAGNER:

Karen Gautreaux?

(No response.)

Wilfred Fruge?

(No response.)

Randy Lanctot?

MR. LANCTOT:

Here.

MS. WAGNER:

Jim Maranto?

(No response.)

Mike Lyons?

MR. LYONS:

Here.

MS. WAGNER:

Troy Vickers?

(No response.)

Mr. Harper, that is five in attendance and does constitute a quorum.

MR. HARPER:

Okay. Thank you very much.

We are going to now hear a motion for approval of

the minutes of the prior Board meeting.

MR. BRIGGS:

I so move.

MR. LANCTOT:

Second.

MR. HARPER:

Without objection ‑‑ any objection?

(No response.)

Without objection.

I would like now to move to ‑‑ move up Item VII in

the Committee agenda as the current topic for

discussion.

At the current session of the legislature, House

Bill 212 has been filed. This bill allows the bonding

of the income stream for the orphan well program. We,

at the Department, believe it is good policy and it

provides another tool in the box for us to address the problem of many highly‑hazardous orphan wells,

especially in the coastal zone. It is permissive legislation. It doesn't require us to do this, nor

does the bill require a certain amount of money to be

set aside, but if you use a theoretical set aside of $2 million, it would generate about $15 million in bond proceeds over a ten‑year period that would allow us to immediately plug, let's say, in a 12‑month period, about 104 Category 1 and Category 2 wells, primarily in

the coastal zone. If you do the calculations and if we

do a pay‑as‑we‑go like we're doing right now, it would appear that over the ten‑year period, we would plug

about 129 wells. So the question is, do we stretch the

129 out over ten years, or we do 104 over, say, the

next 12‑month period?

Also, one of the advantages of doing this, it

would draw out a better price due to the volume of

wells that would be plugged. We would be able to bid

them in group packages and not do them one‑by‑one as we

are doing right now.

The bill has been filed, and it is House Bill 212,

by Representative Morris. It has not been scheduled

for a hearing yet.

MS. WAGNER:

A copy of the bill is in your handout after the

blue, blank sheet of paper.

MR. BRIGGS:

We had this bill last year. What happened to us

last year on this?

MR. HARPER:

Last year was a massive bill. The way it read

was, we were to sell bonds to plug every well in the

coastal zone, every orphan well in the coastal zone,

and it required like $60 million. There was no income stream to support it. This bill is moved from the

income stream and rededicates it. For purposes of the calculations, we did use a $2 million dedication on a ten‑year period at a five‑percent interest rate, and

that right number may be $1 million or that number may

be $3 million. It is ‑‑ the bill that is moving is

simply permissive.

And we do have in the audience today Alex Picheaux

with the law firm of Adams and Reese that assisted us

in drafting the bill.

MR. LYONS:

Do we pledge the receipts, the future receipts, of

the Program ‑‑

MR. HARPER:

Yes.

MR. LYONS:

‑‑ in the bonding?

MR. HARPER:

Yes.

MR. LYONS:

So, if we addressed 130 wells in the first 12

months, then we wouldn't be able to address any more

for the next nine years, is that right, because we

would have ‑‑ we would be paying the bond payment?

MR. HARPER:

It depends on the commitment we make. The income stream is $4 million. For the purposes of the

discussion, I just committed $2 million of the income stream, so it would still be $2 million available to continue normal, routine, day‑to‑day plugging, but once again, it is permissive. The amount of money is not mentioned in the bill. The decision might be to simply pledge $1 million.

MR. LYONS:

Okay. So we are not talking about pledging everything, the entire income stream?

MR. HARPER:

No.

MR. LYONS:

Okay.

MR. LANCTOT:

So it is permissive, so that means that ‑‑ who

approves moving forward once the legislature, assuming they do adopt the legislation or authorize the statute?

MR. HARPER:

The Secretary of the Department will move forward,

but I am certain it would be with the concurrence of the Oilfield Site Restoration Commission.

MR. BRIGGS:

Question for the engineering group, we are not

used to having that much money that quickly, so can we

spend that kind of money that quick, efficiently? I

mean, today, we are spending $4 million a year, and

we're working on a year to do that, and now, all of a

sudden, we are going to how much, $20 million ‑‑

MR. HARPER:

Fifteen million.

MR. BRIGGS:

‑‑ fifteen million?

MR. BROTHEN:

Well, I think the constraint that we realize at

this point in time might be a limitation of available contractors. I'm not sure how that will pan out yet. Because, historically, we have only had a small number that have participated in our water projects, so we

might have to do this in conjunction with some sort of maybe, for lack of better words, a PR campaign that,

you know, DNR is pushing to get this kind of work done perhaps and maybe generate some more interest from contractors that are perhaps able to do this kind of

work on the water.

MR. BRIGGS:

Right.

MR. HARPER:

And this is certainly a decision that can be made

at the time that the decision will be made on how much

of the income stream to dedicate. Maybe an appropriate decision would be to dedicate only $1 million of the

income stream and generate $7.5 million, that could

very well be the decision.

MR. BROTHEN:

Now, another thought is, you know, the idea here

is to bid these out in a great big project. So, historically, we have had problems. Say, we put out multiple water projects simultaneously. Well, if you

have one low bidder on both those projects, that causes delay, but, I mean, if we are going to put this project

out, perhaps, you know, a pretty large, expansive

coastline perhaps, you still are only going to have one contractor so it shouldn't be a problem, but it's going

to take some time for that one contractor to get all

those wells plugged. So can you do that in 12 months?

I am not sure, you know. It just depends on how that project is put together with the scope of work, if we perhaps say that you have to have multiple rigs running simultaneously. All these things need to be

considered.

MR. HARPER:

I don't think that the ‑‑ the 12 months was just

an example. I don't think there is a magic about the 12‑month period. I will defer to counsel as to how

long the money can sit before we would have to use it,

and I'm questioning the bond ‑‑ I mean, the tax‑free

bond status.

MR. PICHEAUX:

Thank you, Undersecretary. Alex Picheaux from

Adams and Reese.

The bonds will mature over, let's say, 15, 20

years, so you have that amount of time to pay back the

bonds. I am not sure I have my arms around why there

would be a 12‑month ‑‑

MR. HARPER:

No. There would be no 12‑month ‑‑ how long ‑‑ if

we sell them and we generate $15 million, the question

is, how long do we have to spend the $12 million ‑‑ or

the $15 million before the tax‑free status of the bonds comes into question? I know you can't sell bonds and

then not use the proceeds for years and years.

MR. PICHEAUX:

Right. Under the Federal tax laws, there is

spending requirements, and generally, I think the

outside is 18 months, but you can ‑‑ I would have to

check this, but I think for remediation bonds, I think

there is some exceptions to that. So I don't foresee

‑- I mean, you would spend the money, I'm assuming, I

don't know ‑‑ I was under the impression we would size

the bond issue matching the amount of wells we need to

plug, correct? So you could do that over the 18 months

or whatever the outside limit is.

MR. HARPER:

Okay.

MR. PICHEAUX:

So we would size the bond issue to match the

demand.

MR. LYONS:

You know, just another thought, if we are going to

face the governor of taking five percent or ten percent

of the money, when we all of a sudden have a lot more

money, the governor under his current constitutional authority could take some of that money, take a big

chunk of that money. I mean, now he takes five percent

of whatever is in the Fund.

MR. HARPER:

But these bonds ‑‑ the proceeds of these bonds

will be held by a trustee bank outside of the State

General Fund.

MR. LYONS:

That may be a good thing. We may put the money somewhere where the governor cannot legally, constitutionally take the five percent or ten percent, whatever he gets authority for, so ‑‑ and that is the way ‑‑ that is what I was getting to is maybe a good

part of this or maybe a bad part of this, but we need

to think about that too, about the governor who has in

the past taken some of these funds, and that may be a

good thing to tie them up in ‑‑ you know, it may be

something we need to look at.

MR. FREY:

What about ‑‑ we had ‑‑ I know we had a discussion before about utilizing some of the current funds. I

think there was a proposal by the Department to

possibly hire outside counsel and some remediation

work, or was that another Commission I was sitting on?

MR. BRIGGS:

It was another Commission you were sitting on.

MR. FREY:

Okay. That was Ground Water, okay. Sometimes I

get the two confused, but I would support anything that would help us work on that list of what, over 2,000 ‑‑

what is the number? Well, we will get to that later,

but these are good, secure bonds, and I like the idea

of the government not being able to touch those, which

is what I read into this.

MR. BRIGGS:

And I saw all the securities in here, but this ‑‑

you know, of course, it doesn't really classify the

money, okay, and ‑‑ because this was supposed to be dedicated in the first place, and for whoever would

have been taking money out of it, okay. So, I mean ‑‑

I don't know if you're aware of this, but just how

secure is the fund ‑‑ would the funds be in this, if we

did this?

MR. PICHEAUX:

Well, if they support a bond issuance, they are completed secure. Bob and I have kind of had this conversation. Many State agencies are reviewing that strategy as of right now.

MR. HARPER:

If we do this, once again, using ‑‑ theoretically using $2 million, there will still be a $2 million

income stream that could be, for lack of a better word, "stolen" from the Fund. So it not going to completely protect the Fund, but what this protect is the $15

million in proceeds that will not be in the State

Treasury. It will be with a trustee bank.

MR. PICHEAUX:

That is correct.

MR. BRIGGS:

What is the process for spending that money; I

mean, how is that managed?

MR. PICHEAUX:

Well, I mean, that is going to be managed, I think Secretary Angelle as the fiduciary will make those decisions, but the ‑‑

MR. HARPER:

We will be handling this the same way Public

Safety handled some buildings that they built when they bonded some motor vehicle money. The contracts will be

led through the Department of Natural Resources,

through the same process we are doing right now,

through the bid laws of the State of Louisiana. The

only difference is, when the monthly invoices came in,

we will approve ‑‑ or have the engineering staff

approve those monthly invoices if the costs are

appropriate within budget for the project, and then the invoices will be sent on to the trustee bank to make payments to the contractor. We will not be making the payments to the contractor out of our appropriation.

MR. PICHEAUX:

That's correct.

MR. BROTHEN:

So to answer your question, Don, I think the staff unanimously believes that this is a tremendous opportunity, should it pass, you know, for the Program

to do a lot of good. We are very optimistic we could

get the work done in a relatively short period of time.

I just don't think we are confident at this point in

time to, you know, provide a timeline to the

Commission.

MR. BRIGGS:

I wish we would have known we were going to be addressing this issue before this meeting. I just ‑‑

maybe we did, and I didn't read it somewhere.

MR. HARPER:

Actually, this was the reason the meeting was

moved up from the former meeting was because I was

getting too late in the session when all those bills

start moving.

MR. LANCTOT:

But I think we talked at length about this concept prior to the bill we had filed last year, and everybody

felt it was a good idea, without getting into the

details of it, and can we not say $2 million of income

stream for the Fund would be dedicated to ‑‑ would be security for ultimately paying off the bonds?

MR. HARPER:

Yes.

MR. LANCTOT:

So that money would be protected if the governor decided to take five percent?

MR. HARPER:

Yes.

MR. LANCTOT:

And that would ‑‑ but the amount, there is nothing

in here that says the amount?

MR. HARPER:

No.

MR. LANCTOT:

Okay. So the amount could be something different based on our work load or the chunk of work load we

decide that should be covered by this process?

MR. HARPER:

Yes. $2 million was just a number we were going

to use to do the fiscal note.

MR. LANCTOT:

So, if we took, say, $1 million, and then we got

to the end of that and we wanted to bite off another

chunk, could we do that, with another $1 million?

MR. PICHEAUX:

Yes, sir.

MR. LANCTOT:

Okay. So that's a lot of flexibility that ‑‑ so

we're not making the commitment to take on more

projects than we are physically capable of doing. We could, you know, do what we had the capacity to do at whatever, $1 million, or whatever it is, $2 million,

and then expand it to ‑‑ once we finish with that, just

like we do now, you know, with the money we've got

coming in, or we could ‑‑ no, I won't bring that

subject up, but we could get more money coming in from

the producers, but ‑‑ no.

MR. LYONS:

I don't know that we need to endorse it today. We

can say, let's move forward with it, it is permissive,

and continue to look at it. And I'm not saying ‑‑ I'm

not saying anything. I am just saying I think that

maybe the action we should take today because Don is ‑‑

and I haven't read it either, but I think, you know, we

are not opposing it.

MR. BRIGGS:

No.

MR. LYONS:

We are just continuing to look at it. It is permissive, even if it passes, it doesn't have to be implemented. So, at the same token, I mean, I think we would like to look at it and continue to advise the Secretary, but I would ‑‑ I think I would be uncomfortable with a motion to support the legislation at this time, other than to let's move forward with it and continue to talk about it.

MR. HARPER:

We certainly wanted the Commission to be aware of it before we had a hearing on the bill at the legislature, that was the intention of putting it on the agenda.

MR. BRIGGS:

I mean, just looking at this, Bob, I mean, the Commission, you know, has read through this thing.

Have you looked at it, Randy?

MR. LANCTOT:

Uh‑huh.

MR. BRIGGS:

If you read through this, I mean, the Commission is authorizing and giving a lot of power here, I mean, in this thing. So, I mean, that is why I think that it is important that we read this very carefully.

MR. LANCTOT:

Sure. I mean, I don't ‑‑ I was just trying to capture some of our thoughts and discussions prior, because we, I think, in general, support this idea, but the specific mechanics of it is ‑‑ you know, we have to look at that more closely.

MR. FREY:

Alex, let me ask you, I am not that familiar with the whole bonding requirements, et cetera, but sitting on this Commission as a representative, could I be held responsible or liable, what is ‑‑ as a member of this Commission, what would be our obligations should they default on the bonds, that type of thing?

MR. PICHEAUX:

No, sir, not at all. All your bond documents will have representations and indemnifications that exempt the members or directors of any board or commission that issue bonds from any liability with respect to that.

MR. LYONS:

If I could follow up on that, and it goes to Don's question, the way the statute reads now, the Secretary controls the money. We are just an advisory board, so I would be concerned maybe about this legislation giving us more authority than is actually under the substantive law. In other words, we don't control the money, and we did that, if you remember, because the question is ‑‑ it came up in the ethics discussion about whether we had to make certain reports because we controlled more than ‑‑ I forget the number, $100,000, $25,000, whatever the Ethics Code threshold was. So we made it clear that actually the Secretary has control of the money and can spend the money as he sees fit. We just advise him, which is pretty much the role we have played throughout. I mean, we don't approve things before they happen. We generally look at them after they happen and set some guidance for the staff, but we don't have the authority to expend the money or ‑‑ so, if that authority is somehow suggested that we do that within the legislation, then we would have to think about that, because I think we ‑‑

MR. PICHEAUX:

We were sensitive to that very topic in drafting this. Everything is under the direction of the Secretary. The Secretary has the powers to disburse the monies, to pay the bond, and everything, so everything you will see in there is at the direction of the Secretary.

MR. LYONS:

Okay. I would be satisfied with moving forward, you know, subject to comments as we go forward. I don't think that ‑‑ I don't think any of us would want to stop it at this point ‑‑

MR. HARPER:

Well, we will proceed with scheduling the appropriate hearing moving through the process, but certainly Secretary Angelle is open to the suggestions of the ‑‑ that the Commission would like to make. We want to make sure everybody is comfortable with this as we move forward.

MR. PICHEAUX:

Thank you very much.

MR. HARPER:

I guess now we will go back to our normal agenda, back to Item No. III, the Fund status.

MS. WAGNER:

Okay. Item III on the agenda concerns the status of the Fund. Please turn to Page 2 of your handout. As of today, there is approximately $700,000 at the Treasury. We have over $1 million in contractural obligations, so there are currently no unencumbered funds available.

April 30th begins the fourth quarter collection period for oil, and gas collections will begin being paid May 15th, so, shortly, the Fund should collect approximately an additional $900,000 to finish the year with a total collection in excess of $3.8 million.

If you will, please, notice the $18,331 reimbursement from the National Pollution Fund, this is to cover the costs associated with providing a conservation enforcement agent during a U.S. Coast Guard project in July of 2009. This was to plug and abandon a leaking well in Boston Bayou Field, Vermilion Parish.

The next page, 2A, in your handout is a supplement to the Fund balance sheet demonstrating the annual fee collections per fiscal year since Program inception. Currently, the Program has collected $2.9 million, and as I just said, we expect to exceed $3.8 million this fiscal year.

Pages 3 and 4 include the details on the Site‑Specific Trust Accounts, which is Item IV on the agenda. There have been two new accounts established since we last met. Page 3 itemizes all of the accounts the Program ‑‑

MR. BRIGGS:

Let me interrupt you just one second.

I'm looking at $46 million in here in the Site‑Specific Trust Accounts, those are secure, right?

MR. HARPER:

Yes, yes.

MS. WAGNER:

Yes, and that is no longer used to calculate the balance of the Fund when they do the five percent or ten percent deduction.

MR. BRIGGS:

In the calculation, there is no way that can get ‑‑

MS. WAGNER:

That's correct, that is protected.

MR. HARPER:

That's considered custodial funds, that's the category, accounting category, they are.

MR. BRIGGS:

Okay.

MR. LYONS:

At one time they did take five percent of that, didn't they?

MS. WAGNER:

That's right. The first time when we had the $433,000 removed, there was a misunderstanding in the Fund balance.

There were ‑‑ there have been two new SSTA accounts established, those are No. 42 and 43 on Page 3. Site‑Specific Trust Account 11‑01 was established in the Lake Hermitage Field, Plaquemines Parish. It covers 25 wells and the associated production equipment at an assessed restoration value by an approved oilfield site restoration contractor of $2.5 million, and this account was secured with a letter of credit. Site‑Specific Trust Account 11‑02 was also established with a letter of credit. It covers one site in Cloverly Field, Lafourche Parish, at an assessed removal and restoration cost of $125,916.

Page 4 in the handout outlines the Site‑Specific Trust Accounts that have any sort of cash balance.

Item V on the agenda concerns Program statistics. On the left side of the page are the statistics as of today, and on the right for comparison are the statistics presented at our March Commission meeting. Starting at the top of the page, to date, the Program has plugged and abandoned 2,482 orphan wells. You will notice in comparison that that is one more from last meeting. The Program plugged and abandoned a leaking orphan well in Red River Parish in an emergency project. Site pictures are provided on Page 15 and 16 in your handouts.

Continuing down the page to Section 3, orphan wells remaining statewide, there are currently 2,820 orphan wells statewide. Section 4 lists the recently orphaned well count, and no wells were orphaned in April. Sixty‑nine wells were orphaned in March, 68 of those wells are associated with one orphan operator, Bowie Operating Company, LLC, and a $125,000 financial instrument was collected.

If you'll direct your attention to Page 6, I have provided a graph of the current orphan well count in the state compared to the cumulative number of wells plugged by the Program. And we are still striving to reach the achievement of the graphs crossing with more wells plugged by the Program than there are on the orphan list, that is yet to be achieved.

The next page in the handout, Page 7, details the ongoing OSR projects. Line Item 1 under "Active Oilfield Projects," is the emergency bid for a contractor to provide and install U.S. Coast Guard‑approved navigational aids on 166 identified orphan well sites. This emergency bid proposal was issued on April 6th of this year, in order to accomplish installation of the navigational aids on the 1A, 1, 2, and 3 priority ranked sites in the C.H. Fenstermaker emergency investigation.

Deadlines are provided in the bid proposal for 1A priority sites to have navigational aids installed within 45 calendar days of the date of the Notice to Proceed. The project completion deadline is within 160 calendar days of the Notice to Proceed, barring any weather or permitting delays.

A prebid conference was held yesterday with seven contractors in attendance, and, therefore, seven contractors are eligible to bid on this emergency project. A question and answer period follows this prebid conference with all questions due in writing by 11:00 a.m., on May 9th. Written responses from the Program are due to the contractors by close of business May 12th, and sealed bids are scheduled to be opened on May 17th, at 11:00 a.m. Contained within the bid specifications in a notice that no payment will be issued on the project prior to September 30th, to ensure the Program has collected the necessary funds to pay for the contract. The bid specifications are available on our website if any of the Commission members are interested. It is a 57‑page document, so we didn't feel it was prudent to attach it in your handout, but there are several pages at the end of your attachment with the key details from the bid proposal.

Any questions?

(No response.)

MS. WAGNER:

Moving on down to the next Line Item No. 2, that is the four‑well Manila Village project in Jefferson Parish. The project was awarded after the last Commission meeting. The contractor has requested additional time to obtain the necessary financial assurance documents in order to obtain signed contracts, so no work has commenced on that project yet.

Item No. 3 is a project to clamp the leaking project in Tigre Lagoon Field, Vermilion Parish, and was also awarded after March's Commission meeting. The contractor has made an additional site visit, and we are waiting on specifications in order to complete the Coastal Use Permit to issue a Notice to Proceed.

Line Item No. 1 in the projects completed since we last met section is the previously mentioned emergency project that resulted in the additional well plugged by the Program in Red River Parish. An emergency was declared on April 1, 2011, due to an orphan well leaking gas and saltwater into a nearby bayou in a wildcat field in Red River Parish. Site pictures are included on Pages 15 and 16 of your handout, but due your schedule and the session, I will skip detailing those pictures, but they are there for you to look at.

We'll move on to Item VI on the agenda, "Federal and Third‑party Activities," if there are no objections. EPA plans to be very active in the next several months with planned facility removals in Bienville and Sabine Parish. This will include plugging and abandoning one orphan well, and they will continue to evaluate several sites that we have referred to them for qualifications for OPA 90 Federal removal dollars.

The Program participated in a phone conference on May 3rd, with the U.S. Coast Guard New Orleans Sector, the EPA, the National Pollution Fund Center, and LOSCO to discuss the New Orleans Sector establishment of an area subcommittee to focus on eliminating the threat to the environment of orphan wells in navigable waterways. U.S. Coast Guard New Orleans Sector has initially identified eight orphan well site to apply for OPA 90 funding for plug and abandonment. Typically, the U.S. Coast Guard is reactive to an immediate threat spill situation. They are trying to take a preventative, proactive approach and utilize the available funding source through the National Pollution Fund to remove the imminent threat of oil on water from these eight identified orphan sites through plug and abandonment. The first site selected to submit to the National Pollution Fund Center for funding authorization is located in Breton Sound Block 53 in Plaquemines Parish, and this initiative is in addition to the U.S. Coast Guard's normal response activities to any oil in water, and the Program was instructed to continue to refer sites. We look forward to working closely with the Coast Guard to utilize the additional funding through the National Pollution Fund Center and OPA 90 money available.

That is all I have to present.

Thank you for your time and attendance.

MR. HARPER:

Do we have anything else the Commission would like to discuss?

(No response.)

Do I have a motion to adjourn?

MR. BRIGGS:

So moved.

MR. LYONS:

Second.

MR. HARPER:

Any objection?

(No response.)

We're adjourned. Thank you very much.

CERTIFICATE

I, MICHELLE S. ABADIE, Certified Court Reporter, do hereby certify that the foregoing Oilfield Site Restoration Commission meeting was conducted before Bob Harper, Department of Natural Resources, on May 5, 2011, in the Department of Conservation Hearing Room, Baton Rouge, Louisiana; that I did report the proceedings thereof; that the foregoing pages, numbered 1 through 25, inclusive, constitute a true and correct transcript of the proceedings thereof.

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MICHELLE S. ABADIE, CCR #24032

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