Annual Institute on Mineral Law

Volume 45 *The 45th Annual Institute on Mineral Law* Article 13

3-26-1998

Seismic Related Contracts

Thomas G. Smart

Seismic Related Contracts

Thomas G. Smart
Onebane, Bernard, Torian Diaz, McNamara & Abell
Lafayette, LA

I. Introduction

Purpose: Over the last few years seismic data has become an important driver in the oil and gas industry. As a result, issues relating to the acquisition, ownership and use of seismic data permeate many different types of contracts which have been commonly in use in the industry. These issues also come into play in many types of deals and transactions taking place in the industry. This outline is not intended to be an exhaustive review of these contracts and the jurisprudence impacting same. Rather, it is intended as an overview of many of these contracts .' and many of the seismic related issues which now arise in these contractual relationships. It is hoped that it will be useful in making you more aware of the issues which need to be considered and thought through in each of these contracts and transactions.

Viewpoint: From a substantive law viewpoint this outline will focus on Louisiana law. It is hoped that the contractual issues and suggested approaches may be of use in other states as well. With regard to the attitudinal viewpoint, the writer has represented oil and gas companies, geophysical companies and landowners. If there is a bias in this paper, however, it may be toward the companies acquiring data (Le., oil and gas companies and geophysical companies).

Types of Contracts to be Addressed: This outline will address contracts entered into with landowners and mineral owners (e.g., Seismic Permits, Seismic Permits with Options to Lease, Oil, Gas and Mineral Leases, and State of Louisiana Exclusive Geophysical Agreements), with or between oil and gas companies/ lessees (e.g., Permits, Exploration Agreements and Farmout Agreements) and with geophysical companies or data owners (e.g., Data License Agreements and Master Service Agreements).

II. Contracts with Landowners and Mineral Owners on Private Lands

A. Permission Needed:

To many companies engaged in the acquisition of seismic data in Louisiana, the problem being faced is not the form of the contract or which terms and provisions to include. Rather, the major uncertainty is who they need to obtain permission from, or "who" to contract with. This problem arises in part because the law in Louisiana has not developed sufficiently in this area. The Mineral Code and other statutes do not specifically deal in detail with seismic permission or consent issues. Most of the jurisprudence

in this area is old, and recent decisions have been confusing and alarming to industry. Hereinbelow, we will review the jurisprudence in Louisiana in this area, a few of the pertinent statutory provisions, and a recent pending lawsuit of significant interest. Following that, we will review certain permitting situations and the writer's opinion on the consent necessary in each situation.

Jurisprudence:

The following is a chronological listing, along with a brief summary, of the major decisions by Louisiana courts with respect to seismic permitting and/or trespass.

a. *Le Bleu v. Vacuum Oil Co.,* 132 So. 233, 776 (La. App. 1st Cir. 1931) (court found trespass had occurred and awarded $50 in damages where oil company entered property without authorization and set up and used torsion balance machine for exploration of minerals; damages awarded even though, as the court found, the operation gathered data as to property other than plaintiffs property and plaintiff could not establish depreciation of value of minerals).

b. *Angelloz v. Humble Oil & Refining,* 199 So. 656 (La. 1940) (the right to permit entry upon land to conduct geological surveys for the purpose of exploring for oil, gas or other minerals is a valuable property right and belongs exclusively to the owner; as a note for future reference, there would have been no need to distinguish between the owner of the "minerals" and the "surface" in this case as there was no indication that the landowner did not own the minerals to the property involved).

c. *Layne Louisiana Co. v. Superior Oil Co.,* 26 So. 2d 20 (La. 1946) (trespass admitted; landowner owned property totaling 2098 acres; portion of property subject to a mineral servitude. the result of which was that the landowner owned minerals as to only 7:'4.5 acres; court affirmed an award of damages as to the 734.5 acres based upon the value of the shooting rights reasoning that "the right to explore land for oil, gas or other minerals is a valuable right;" the court affirmed the denial of plaintiff's claim for damages as to the reversionary interest where plaintiff did not own the minerals as being "too speculative to form the basis for an award for damages").

d. *Holcombe v. Superior Oil Co.,* 35 So. 2d 457 (La. 1948) (companion case to *Layne* brought by mineral servitude owners; court affirmed award of damages to mineral owners; in trespassing and obtaining information defendant "took from plaintiffs a property right valuable to them;" plaintiffs were entitled to recover for this "unauthorized and illegal taking").

e. State *v. Evans,* 38 SO.2d 140 (La. 1948) (conviction reversed for procedural reasons; prosecution was under early version of statute prohibiting the prospecting for oil, gas or other minerals on public or private lands without . the consent of the owner (the prior version of LSA R.S.

30:217.A, see Jeanes, below); defendants were being prosecuted for gravity meter tests on roads across private owner's property without the permission of the private owner who owned the road bed; court found the statute penal in nature and to be strictly construed).

f. *Franklin v. Arkansas Fuel Oil Co.,* 51 So.2d 600 (La. 1951) (private suit for damages arising out of *Evans* prosecution; plaintiff failed to prove loss of lease value or dissemination of information obtained through the survey; defendant held liable for damages, with the court following the jurisprudence which previously established that the right to conduct geophysical operations is a valuable property right; court reduced damage award from $37,834 to $7500. with the measure of damages being based upon the price for prior offers for geophysical options).

g. *Picou v. Fohs Oil* Co., 64 So.2d 434 (La. 1953) (suit for trespass and damages; court denied damages for geophysical trespass finding that no information was obtained as to plaintiff's property and therefore no information could have been disseminated; court awarded damages for destruction of trees; court likely influenced by evidence that consent to entry may have been given, but court did not find it necessary to draw that conclusion).

h. *Tinsley v. Seismic Explorations, Inc.,* 117 SO.2d 897 (La. 1960) (plaintiff was lessee under a mineral lease in which the landowner granted him the exclusive right to explore for minerals; defendants conducted seismic tests on the lease premises with the consent of the landowner but without the consent of the plaintiff; court held that a mineral lessee may have a cause of action for damages if it can establish (1) that it became vested with the exclusive right to conduct geophysical surveys on the subject property under the contract of lease, (2) that under the provisions of LSA R.S. 9:1105 such right is protected against invasion by timely recordation of the lease, and (3) the damages claimed to have been sustained are established by the evidence; plaintiff showed (1) and (2), but the court denied recovery because he "utterly failed to prove any measure of actual damages suffered by him and of such a certainty as to be recoverable under our law").

i. *Sick, III v. Bendix-United Geophysical Corp.,* 341 So.2d 1308 (La. App. 1 Cir. 1977) (owners of oil and gas mineral leases pursuant to unrecorded agreements brought action for geophysical trespass; court held that where plaintiff/unrecorded lessee failed to allege that defendants were trespassing on property not only without their permission but also without permission of record owners, plaintiffs did not state a cause of action).

j. *Lloyd v. Hunt Exploration, Inc.,* 430 SO.2d 298 (La. App. 3d Cir. 1983)(lease executed in favor of Placid; Placid granted Hunt permission to conduct seismic operations, but letter from Placid specified Hunt had to obtain any other necessary approvals; Hunt argued that by virtue of the lease only Placid had the right to bring the suit; court held lessor did not by

executing lease abandon his right to protect his property against wrongful acts of others).

k. *Ard v. Samedan Oil Corporation,* 483 So.2d 925 (La. 1986) (landowner executed oil, gas and mineral lease in favor of Samedan whereby Samedan was granted the "exclusive right to enter upon and use the property for mineral operations as set forth in the lease;" Samedan authorized Seiscom (a geophysical company) to conduct operations on property; court held a trespass had occurred, stating that "[u]nder the terms and conditions of the lease, Samedan did not have the right to authorize any party to enter or use plaintiffs property for any purpose whatsoever without plaintiff's permission").

l. *Jeanes v.* G.F.S. *Co,* 647 So.2d 533 (La. App. 3d Cir 1994), writ denied, 650 So. 2d 255 (La. 1995). This is one of the few recent decisions in the seismic arena and deserves more detailed discussion. This decision was the cause of great uproar, posing problems both from a surface owner vs. mineral owner consent standpoint and from the standpoint of permitting co-owners. The uproar resulted in legislation attempting to legislatively overrule the *Jeanes* decision. But see, *Allain,* below. In *Jeanes,* the Louisiana Third Circuit Court of Appeals affirmed the trial court's finding that the defendant geophysical company was liable for trespass. The Court of Appeal found the 80% consent statute inapplicable to the case at hand, and more significantly further stated that, where the minerals are owned separate from the surface, the consent of all the owners of the land is required in order to conduct seismic operations.

This case involved a trespass suit brought by the owner (Jeanes) of an undivided 15% interest in the surface and minerals of a 7600 acre tract. The seismic company (G.F.S. Co.) claimed that it had the consent of 80% or more of the mineral owners under LSA R.S. 31 :175 (which, although it did not at that time refer specifically to seismic operations, allowed operations with the consent of 80% of the owners of a mineral servitude if certain prerequisites were met). What the Court of Appeals did not discuss, but what is evident from the briefs filed, is that there was a serious issue as to whether the 80% consent had actually been obtained. Some 40% of the mineral interest the seismic company was relying upon was apparently owned by individual shareholders. G.F.S. had instead permitted the corporation and was faced with having to argue that the corporation (who only owned an interest in the surface) was representing the shareholders, despite the fact there was no power of attorney or other evidence of authority. The trial court found that a trespass had occurred because the corporation did not have the authority to represent the 40% mineral interest owned by the individual shareholders, and thus the 80% consent had not been obtained.

The Court of Appeal affirmed, finding that G.F.S. was liable for trespass, The Court first found that LSA R.S. 31:175 "does not apply to this

case," though the basis for this finding was not clear from the Court's decision. The Court went further, adopting an argument not even raised in the briefs filed by the parties, to state that LSA R.S. 30:217 (which required "the consent of the owner") required the consent of the "owner of the land irrespective of who owned the mineral rights." A writ application was filed with the Louisiana Supreme Court, but writs were denied.

It is the writer's opinion that the Jeanes decision was correct for the wrong reasons. 80% consent was not obtained, as the trial court had found. If 80% consent had been obtained and the statutory prerequisites were met, then the "owner" consent requirement should have been met. All LSA R.S. 30:217.A. required was the consent of the "owner." Because this was an activity undertaken to explore the minerals of the property, it is the writer's opinion that the "owner" means the mineral owner. If a similar statute was enacted for the drilling of wells, would you then be required to get the consent of the surface owner even though the mineral owner had consented? Such an interpretation in today's oil and gas industry where 3-D data is virtually required to drill a well would allow surface owners to block mineral development and mineral servitude owners would not be able to maintain their servitudes in effect. It is questionable whether the *Jeanes* case would have been followed by courts, but, in any event, legislation was passed to attempt to legislatively overrule *Jeanes.*

m. *IP Timberlands Operating Company v. Denmiss,* 657 So. 2d 282 (La. App. 1st Cir. 1995) (decision involved primarily a challenge of the right of IP to exercise an option to purchase contained in a long term timber lease; the court upheld an award of damages against the surface lessee (IP) for unauthorized issuance of seismic permits, stating "[a] seismic permit can be granted only by the mineral owner or a mineral lessee").

Louisiana Legislation:

a. LSA R.S. 30:217.A (Title 30 Provisions Requiring Permission Prior to Conducting Seismic Operations on Private Lands):

(1) Prior to *Jeanes* Amendments: Prior to the amendments passed to overrule the Jeanes decision, LSA R.S. 30:217.A provided as follows:

> **A.** *(1)* No person shall conduct geological surveys for oil. gas or other minerals by means of a torsion balance, seismog.aph explosions. mechanical device, or any other method whatsoever, on any land, without consent of the owner.
>
> *(2)* "Owner" as used herein shall not include a person or legal entity with only a surface or subsurface leasehold interest in the property.
>
> *(3)* Whoever violates this Subsection shall be fined not less than five hundred dollars nor more than five thousand dollars or imprisoned for not less than thirty days nor more than sixty months, or both. (emphasis added).

(2) *Jeanes* Amendments: In order to address the *Jeanes* issues, the

end of LSA 30:217.A (1) was changed from "without the consent of the owner" to the following:.

> unless he has obtained the consent of either the owner or the party or parties authorized to exercise geological surveys, leases or permits as provided in the Louisiana Mineral Code.

b. Civil Code Provisions on Co-ownership: The following articles of the Louisiana Civil Code are pertinent. These articles establish the principle that the consent of 100% of the owners is required for certain uses of co-owned property, subject to exceptions.

> La. Civil Code Art. 801:
>
> The use and management of the thing held in indivision is determined by agreement of all the co-owners.
>
> La. Civil Code Art. 802:
>
> Except as otherwise provided in Article 801. a co-owner is entitled to use the thing held in indivision according to its destination, but he cannot prevent another co-owner from making such use of it. As agair.st third persons, a co-owner has the right to use and enjoy the thing as if he were the sole owner.

Pre-Mineral Code jurisprudence, in the context of oil and gas operations under mineral leases, had found such operations to be a change of destination. See *Sun Oil* Co. *v. State Mineral Board,* 92 So. 2d 583 (La. 1957); *Gulf Refining* Co. *v. Carroll,* 82 So. 277 (La. 1919). Seismic activity would not be considered to be the "destination" of the property and therefore, subject to the exceptions discussed below, 100% consent would be required.

c. Mineral Code Provisions on Co-ownership: The following are the provisions contained in the Mineral Code which directly address seismic operations. The portion in bold was added as part of the *Jeanes* amendments.

> LSA R.S. 31:166. (Granting of Mineral Lease by Co-owner of Land)
>
> A co-owner of land may grant a valid mineral lease **or a valid lease or permit for geological surveys, by means of a torsion balance, seismographic explosions, mechanical device, or any other method** as to his undivided interest in the land but the lessee **or permittee** may not exercise his rights thereunder without consent of co-owners owning at least an undivided eighty percent interest in the land, provided that he has made every effort to contact such co-owners and, if contacted, has offered to contract with them on substantially the same basis that he has contracted with another co-owner. A co-owner of the land who does not consent to the exercise of such rights has no liability for the costs of development and operations or other costs. except out of his share of production. (emphasis added).

LSA R.S. 31:175. (Co-owner of Mineral Servitude May Not Operate Independently) A co-owner of a mineral servitude may not conduct operations on the property subject to the servitude without the consent of co-owners owning at least an undivided eighty percent interest in the servitude, provided that he has made every effort to contact such co-owners and, if contacted, has offered to contract with them on substantially the same basis that he has contracted with another co-owner. **Operations as used in this Section shall include geological surveys, by means of a torsion balance, seismographic explosions, mechanical device, or any other method.** A co-owner of the servitude who does not consent to such operations has no liability for the costs of development and operations except out of his share of production. (emphasis added).

***Allain v. Texstar North America, Inc.*:**

There is presently pending in Iberville Parish an important lawsuit which warrants monitoring, *Allain v. Texstar North America, Inc.*, 18th Judicial District Court, Docket No. 47414-8. On December 11, 1997, District Court Judge Robin Free granted plaintiffs motion for partial summary judgment on the issue of liability and found Act 479 of 1995 (the *Jeanes* amendments as to the Mineral Code) "as it amends LSA-R.S. 31:166 and 31:175, is unconstitutional in that it violates individual property rights under the Louisiana Constitution of 1974, Article 1, Sections 2, 4 and 19." Defendants have filed for a suspensive appeal to the Louisiana Supreme Court. The ultimate outcome of this litigation could have far reaching implications not only for the seismic industry in this state, but also for the oil and gas industry as a whole in this state.

This litigation involves property in Iberville Parish which is co-owned by various parties in "fee" (Le., with no mineral servitudes outstanding). Texstar acquired the contractual right to conduct seismic operations (through perm its, options and/or mineral leases) from co-owners owning 82.5% of the interest in the property. Texstar offered the remaining owners the same deal as the others, but they were unable to reach agreement. The plaintiffs (owners of the remaining interest) filed suit on May 9,1996, seeking to enjoin the survey and seeking damages. Plaintiffs alleged that a trespass had occurred, and that, to the extent Act 479 of 1995 authorized the activity with 80% consent, this was an unconstitutional taking of property without due process. The injunction action was bifurcated from the action for damages.

The requested injunction was denied by District Judge Ian W. Claiborne. Judge Claiborne, in his Reasons for Ruling, found that Act 479 of 1995 had legislatively overruled the *Jeanes* decision. Reasons for Ruling, page 1. Judge Claiborne apparently found the act constitutional:

> Because of the importance of the State's interest in mineral development, individual property rights with respect thereto have been somewhat restricted by law. How far this impingement on property

> rights can go without offending Article 1, Section 4 of the Constitution must eventually be established by jurisprudence. No authority cited to this court suggests that the restrictions upon plaintiff's property rights by sanctioning seismographic exploration without consent (which might cause a diminution of value) reaches that point.
>
> Reasons for Ruling, pages 2-3.

However, the court went on to state that "[i]t would appear .., the plaintiffs have a remedy in a suit for damages not only for their share of the physical damages but for the diminution in property value (should the tests fail to produce favorable results)." Reasons for Ruling, page 2. Writs and appeal were sought by plaintiffs on the denial of the injunction, but were denied.

After remand, the parties then proceeded on the issue of damages. Plaintiffs and defendants filed cross motions for partial summary judgment. District Court Judge Robin Free, whose court the suit was now before, denied defendants' motion for partial summary judgment and granted plaintiffs' motion for partial summary judgment on the issue of liability. See Judgment, December 11, 1997.

In the Judgment, Judge Free decreed that Act 479 of 1995 "as it amends LSAR.S. 31:166 and 31:175, is unconstitutional in that it violates individual property rights under the Louisiana Constitution of 1974, Article 1, Sections 2, 4 and 19." Defendants have filed a suspensive appeal with the Louisiana Supreme Court.

It is submitted by the writer that LSA-R. S. 31: 166 and 31: 175 are constitutional and should be viewed as reasonable restrictions of the rights of minority interest co-owners and as a reasonable balancing and regulation of their rights versus the rights of the other co-owners. Judge Claiborne was correct in the prior Reasons for Ruling when he stated the State's interest in promoting mineral development. Furthermore, allowing a minority interest to block the majority interest from realizing the benefit of mineral exploration diminishes the value of their interest, leaving them with only the remedy of partition.

The *Allain* case is cause for alarm for companies conducting seismic surveys, and potentially for companies drilling and producing as well. Presently, however, it is only a District Court decision out of the 18th Judicial District Court. We will just have to see how the Supreme Court and other courts deal with this issue in the future. It is hoped, from the viewpoint of geophysical companies and oil and gas companies, that the act will be upheld as constitutional. It should be noted that this litigation could have implications beyond the seismic arena. The 80% provisions found in the Mineral Code, which were enacted primarily to allow the drilling of wells without the consent of all co-owners, have never been tested from a constitutionality standpoint. There would not seem to be a great deal of

difference between allowing a seismic' company to conduct a seismic survey with 80% consent and allowing a lessee to drill a well with only 80% under lease. Diminution in property value would seem more likely for a dry hole than a seismic survey. The main distinction that comes to mind is that, if there is a producing well, the non-consenting co-owner would be entitled to production or proceeds after payout of the well, whereas there is no corresponding right to data by the co-owner who does not consent in the seismic survey context.

Additional Comment Regarding *Jeanes* Amendments:

Some commentators have raised the issue (although they ultimately conclude otherwise) that the revision is somewhat unclear because in only two instances does the Mineral Code expressly state that a party is "authorized" to execute geological surveys, leases, or permits for seismic or geophysical operations. See LSA R.S. 31:166 and 31 :175, quoted above. It is the writers opinion that this is not the case. First, it would make little sense for co-owners to be authorized to execute leases and permits for seismic operations, but owners in non-co-ownership situations . to be treated differently. Secondly, while this is of no precedential value, the writer was involved with other attorneys in the revision effort, and the reference to the Mineral Code was intended as a shorthand reference. That is because there are numerous potential ownership situations that could arise. While perhaps the language could have been more clear, it also would have been difficult to specify who the "owner" would have been in each of the potential situations. The other provisions in the Mineral Code are broad enough to cover the owners of other interests and mineral rights in the various situations (e.g., LSA R.S. 31:21).

Analysis of Various Permitting Situations:

We will now address and analyze some common permitting questions and situations. Obviously, the safest approach in any situation is to permit every possible interest owner or interested party. However, this is not always possible. It is the writers opinion that the approach and principles utilized should be very similar to those used in oil and gas leasing and the drilling of wells. With that said, the following is the writers opinion with respect to certain permission/consent/permitting situations.

a. One Landowner:

(1) Question: If you have a tract owned by one landowner who hasn't conveyed his minerals and hasn't granted an oil and gas lease, who do you permit?

(2) Answer: You permit the landowner. This is an obvious answer, but is a starting point.

b. Surface Owner/Mineral Owner:

(1) Question: If you have a landowner who has conveyed all of the minerals pursuant to a single mineral servitude, do you permit the surface

owner, the mineral owner or both? (Is the *Jeanes* case still a problem with regard to surface owner/mineral owner consent?).

(2) Answer: While there may be some uncertainty, it is my opinion that you need only permit the mineral owner. (You may need to settle surface damage claims with the surface owner.)

It should be pointed out however, that if the seismic operation being conducted on the property is solely intended for the acquisition of data on other lands, you should also obtain the consent of the surface owner. This could be viewed as more in the nature of a surface use. This is similar to the case of an oil and gas well being drilled with a surface location on Tract A and a bottomhole location on Tract B. If Tract A is subject to a mineral servitude, then, absent unitization, you would need a surface use agreement and a subsurface easement from the surface owner of Tract A.

c. Co-owners of Land:

(1) Question: If you have 10 co-owners of a tract of land, do you have to get permits from all 10, or will 8 do? (Isn't there an 80% rule?)

(2) Answer: 80% will suffice, if you (1) make every effort to contact all of the co-owners and (2) offer to contract with the ones you are able to contact on substantially the same basis as you have contracted with the other co-owners. See LSA R.S. 31:166 quoted above. If these prerequisites are not met, you need all 10.

A few caveats are in order. First, we must watch the *Allain* case discussed above. Secondly, you must be careful to follow the prerequisites of LSA R.S. 31:166, rather than just merely assuming that since you have 80% consent, you have the necessary consent.

d. Co-owners of Minerals:

(1) Question: If you have 10 co-owners of a mineral servitude covering 100% of the minerals for a tract of land, do you have to get permits from all 10, or will 8 do?

(2) Answer: Same as answer under "c" above. See LSA R.S. 31 :175.

You should note that this answer applies to a "co-owned" mineral servitude (Le., parties owning undivided interests in the same mineral servitude). The result may be different if you are dealing with owners of different mineral servitudes or owners of a mineral servitude that covers less than all of the minerals. In the context of exploring and drilling, the courts have recognized under various ownership scenarios that owners of a mineral servitude covering less than all of the minerals are not co-owners with owners of other mineral servitudes covering the same property or the landowner owning a residual mineral interest. Those courts have also recognized the right of the owners of a mineral servitude covering less than all of the minerals to go onto the property and conduct operations, subject only to the duty to account to the other mineral owners out of production

after expenses. See *Clark v. Tensas Land* Co., 136 So. 1 (La. 1931); Starr *Davis Oil* Co. *v. Webber,* 48 So. 2d 906 (La. 1950); and *Huckaby v. Texas Company,* 78 So. 2d 829 (La. 1955). How this will be applied in the context of seismic operations with respect to the calculation of the 80% consent, whether all consent requirements will need to be met as to each servitude to satisfy LSA R.S. 30:217.A and what issues will be raised as to any accounting that may be owed remains to be seen. It is the writer's view that each servitude should be analyzed separately, and that if the necessary consent is obtained, the operation may be conducted. For example, if one owner owns a single mineral servitude covering 50% of the minerals, that owner should be able to conduct, or authorize, the conducting of seismic operations without the consent of the landowner who owns the residual 50% of the minerals.

e. Mineral Lessee Where Land/Mineral Owner Has Been Permitted:

(1) Question: If you have a permit from the landowner/mineral owner, do you have to get permission from the mineral lessee?

(2) Answer: Where the mineral lessee has been granted the exclusive right to explore, you should get the consent-of the mineral lessee. See *Tinsley,* above.

f. Landowner Where Mineral Lessee Has Been Permitted:

(1) Question: If you have a permit from the mineral lessee, do you need a permit from the landowner?

(2) Answer: Opinions differ on this issue. In *Lloyd* and *Arc/,* discussed above, the courts have held in favor of landowners suing for trespass even though the lessee had granted permission. Notwithstanding the *Lloyd* and *Arc/* decisions, it is the writer's opinion that a strong argument can be made that under the proper circumstances, seismic operations may be conducted with a mineral lessee's consent and without the consent of the landowner. If the lease grants the mineral lessee the exclusive right to explore and does not contain any other restrictions (e.g., specific seismic or surface use restrictions), and the seismic operations are "lease" operations (albeit conducted by a third party), the operations should be authorized. There could be numerous ways the operations could be "lease" operations. but the most common would be a "spec" survey by a seismic company where. as a condition to granting the seismic company a permit, the lessee has the right to obtain the data. On the other hand, if the lessee simply' grants a permit and is not furnished the data and no other "lease" purpose is furthered (e.g.. farmout, etc.), the operation would not be a lease operation and the landowner's consent would be necessary. It should also be pointed out that if one is attempting to rely only upon the lessee's consent on the basis of the operation being a "lease" operation, then one should attempt to avoid a requirement in the lessee's permit "that all other necessary consents be obtained." If such language is used, then you are more open to an opposing

argument based upon the *Lloyd* decision.

g. Multiple Working Interest Owners:

(1) Question: If you have one mineral lease owned by numerous working interest owners (co-owners), how many do you have to get consent from?

(2) Answer: You need 100% consent. There is no 80% rule with respect to co-owners of a mineral lease. This is similar to the issue of whether one could drill a well without the agreement of co-owners of a mineral lease, absent an operating agreement.

h. Different Horizontal Ownership:

(1) Question: If you have a lease with different leasehold ownership as to multiple horizons, do you have to get consent from the owners of each (and every) horizon?

(2) Answer: This is an unanswered question. Traditionally, the owner of deep rights has had access rights to the surface and through the shallow zones (correlative rights). By analogy, one would argue that lessees/permittees of one depth should be able to conduct seismic operations. A contrary argument can be made based upon the valuable property right of the owners of the other depths. The result could also be different in the case of "spec shoots" as opposed to a survey by the working interest owners of a horizon. To the extent possible, if you are unable to permit all depths, it may be advisable to attempt to mitigate damages by "blocking out" data as to the other depths.

i. Window Tract:

(1) Question: If you can't permit a tract, can you shoot through it anyway if you don't go on that tract?

(2) Answer: This is an unanswered question in Louisiana. Under the traditional law of trespass, physical invasion or physical damage is required. One Texas decision is often cited for the proposition that a physical entry is necessary for a geophysical trespass. See *Kennedy v. General Geophysical Co.*, 213 S.W. 2d 707 (Tex. Civ. Ct. App.-Galveston 1948, writ refd n.r.e.). However, due in part to a number of articles that have been written advancing different theories of recovery, there is a good chance courts will not follow or will abandon the physical entry requirement in the future. To the extent possible, it may be advisable to attempt to mitigate damages by "blocking out" data as to the window tract.

An interesting argument has been put forth analogizing this situation to the rule of capture. *See* Owen L. Anderson and Dr. John D. Pigott, "3-D Seismic Technology: Its Uses, Limits, & Legal Ramifications," 42 *Rocky Mt. Min. Law Inst.* 16-1 (1996). Under the rule of capture (as codified in Louisiana under LSA R.S. 31:8), although a mineral interest is a valuable property right entitled to protection against direct surface or subsurface

entry and conversion by a trespasser, a mineral owner has no cause of action against a neighbor who drains oil and gas from a common reservoir through a well bore located entirely within such neighbor's property. *Id.* at 16-112. If a mineral owner drills several dry holes, thus diminishing the value of the minerals for the surrounding property, he is not liable to his neighbors. Similarly, it is argued, as long as a party is not committing a physical subsurface or subsurface trespass, that party should not be liable for acquiring data as to the neighboring tract. The writers also argue that over the long run such an approach would promote the acquisition of seismic data, which would in turn promote more efficient mineral development (e.g., minimize the drilling of unnecessary wells). From this writer's viewpoint, it would also seem that in many instances the owner of one tract may need the information covering the neighboring tract in order to fully and efficiently explore and develop his property for minerals. If one prohibits him from utilizing data as to the neighboring tract acquired from operations on his tract (by prohibiting the use of the data or making him liable for acquiring it), then it would seem that this would adversely affect the use and value of his rights to explore for minerals on his own property. Conceptually, a lot of the same reasons that support the rule of capture seem applicable here as well.

B. Landowner/Mineral Owner Contracts Relating to Seismic Operations:

The common landowner/mineral owner contracts relating to seismic operations are: (1) the seismic permit, (2) the seismic permit with option to lease, and (3) the oil, gas and mineral lease. The first two agreements are more commonly used in . conducting seismic operations, primarily due to the higher cost of leasehold and the fact that data coverage is usually broader than the core acreage to be leased. Depending upon the circumstances, combinations of all three may be used.

1. Seismic Permit:

a. Basic Terms and Provisions:

(1) Parties: The name of the owner granting the permit and the party to whom permission is being granted should be stated. The permit should ideally be executed by both parties, but if the grantee does not execute, there would likely be an implied acceptance (as in the case of oil, gas and mineral leases).

(2) Property Covered: There should be a reasonable description of the property for which permission is being granted.

(3) Use to be Permitted: There should be a statement of the use allowed. This would normally be a reference to allowing the Permittee to conduct a seismic or geophysical survey.

(4) Term: While this is not always found in the common permit form, it is best to state a term. Obviously, the term should be long enough to

perform the survey. You should take into consideration the time needed for the particular project, including the time necessary to put the shoot together, fund it and find a crew.

(5) Consideration: This is another item often omitted from the permit, but it is preferable for there to be a statement of the consideration paid. This may be a statement of the actual amount paid or the standard statement of a lesser amount and "other good and valuable consideration."

b. Additional Terms and Provisions: Additional terms and provisions may be included. These are usually included more often in the case of larger landowners, due to their bargaining position and the larger landowners having more significant interests to protect.

(1) Indemnity: The owner granting the permit will often request indemnity. This ranges from a very simple agreement to indemnify, in the case of smaller tracts, to a very detailed one in the case of larger landowners. While the Permittee does not always have the bargaining leverage, the Permittee should attempt to avoid overly broad indemnity language that may be interpreted to pick up acts of others at the same time on the property, including the acts of the owner.

(2) Damage Clause: This will depend upon the bargaining position of the parties and the size and nature of the property. If such a provision is to be included, a Permittee may prefer a provision allowing it the option to restore or pay damages consistent with those paid in the surrounding area. Owners will likely want provisions which are broad and detailed. You may wish to specify that the amount being paid up front covers ordinary and customary damages, but does not cover certain specified items. It may also be advantageous to both parties to agree up front on per acre damage figures for given items (e.g., crops).

(3) Employees, Agents and Independent Contractors: It would likely be understood anyway, but you may wish to include a specific provision allowing the permitted use to be performed by employees, agents and contractors.

(4) Assignment: You may wish to address the assignment issue (e.g., "can be assigned in whole or in part," or "cannot be assigned without the prior written consent of grantor, which consent may not be unreasonably withheld"). Permittees will obviously prefer assignability. Due to the somewhat uncertain nature of the rights afforded by a "permit" or the granting of permission, it may be helpful to expressly provide that the permit is assignable. Larger landowners will usually prefer to restrict assignment to maintain control over their property. Permittees should be careful, if faced with consent to assignment provisions, that the qualifier "which cannot be unreasonably withheld" is included.

(5) Data: Owners may wish to add provisions requiring that they be furnished with a copy of the 3-D data (including timing of delivery, format,

etc.). This may depend upon the size of the property and the owner's access to 3-D workstations or consultants to evaluate the data. Especially in the case of large landowners, it is very beneficial to have data sets for current lessees (e.g., to monitor a lessee's exploration, development and unitization of the lease premises) and to facilitate exploration and development in the future (e.g., value to future lessees, participate with future lessees, market prospects to future potential lessees).

Permittees (including operators on "proprietary surveys" and seismic companies shooting "spec" data) will want to avoid such provisions because of the cost involved and the desire to maintain the confidentiality and value of the data and/or to avoid competition for acreage to be leased. If a Permittee is in a position where it has to submit to agreeing to furnish the data, the Permittee should consider attempting to restrict the area covered by the data to the permitted premises (or the permitted premises together with a limited area surrounding same), a requirement that the data be maintained confidential (pursuant to a standard license agreement or at least for a set period of time), allow the lessor to view the data at lessee's offices (as an alternative to furnishing a copy) or otherwise provide for or allow the delayed delivery of the data.

(6) Surface Use Restrictions: Depending upon the nature of the property and the bargaining position of the landowner, there may be restrictions imposed on the use of the property. These may include the type of equipment or techniques to be used I where access to the property is to be allowed and the time of the year when the survey may be conducted.

(7) Witness/Acknowledgments: While not usually practical because of the volume of the permits to be obtained, consideration should be given to having the permit executed before two witnesses and then having the witness or party appear before a notary. This should be done to make the execution of the permit "self proving" in the event of litigation and to avoid the possible necessity of proving the owners execution in the event of litigation.

2. Seismic Permits with Options to Lease and Selection Leases: These are used to enable an operator to conduct geophysical exploration over an area for a limited period of time and thereafter to obtain a mineral lease(s) on all or a portion of the acreage.

a. Seismic Permit with Option to Lease (lease to be executed): An agreement where an operator acquires the right to conduct the seismic operations, and the right thereafter to obtain a lease as to all or a portion of the acreage.

(1) Terms and Provisions: The Seismic Permit with Option to Lease will normally contain provisions similar to the Seismic Permit (discussed above) together with the following:

(a) Initial Consideration for Seismic Rights and Option: The

consideration is normally less than the bonus amount for a lease, but more than the cost of a permit. One factor which may affect the cost is whether the grantee is obligated to exercise the option with regard to a certain amount of acreage.

(b) Option Provisions: There should be provisions spelling out the option to lease, any prerequisites therefor, how it is to be exercised and how and when the lease is to be granted. The following items may be addressed.

i) The option (i.e., that the grantee has an option to obtain a lease).

ii) The time period for exercising the option.

iii) The bonus, rentals and royalty to be paid.

iv) Whether the option is to obtain one or more leases, and whether the option can be exercised at any time, or is subject to being exercised once.

v) Whether grantee is required to exercise the option as to a minimum amount of acreage, or if the option is exercised a minimum total must be selected, or whether there is a minimum amount of acreage for which a lease can be selected.

vi) Whether any data which is to be delivered must be delivered prior to selection. In this instance, landowners can have cross purposes. Requiring data delivery prior to selection helps insure that data will be delivered. However, you may want to afford the operator flexibility to select and drill wells before all of the data is in and processed.

vii) There will be a method by which the option to lease will be exercised and the lease delivered (e.g., written notice by grantee and grantor to provide executed lease within a certain number of days).

viii) A form of the lease to be used should be attached as an exhibit to the Seismic Permit and Option to Lease.

ix) Some forms allow a "Seismic Period", during which the seismic is shot, and then an "Option Period", allowing for a time period after the shooting for the exercise of the option.

(2) Disadvantages of the Seismic Permit with Option to Lease: There can be disadvantages to using the Seismic Permit with Option to Lease. In order to exercise the option you must go back to the Grantor and obtain the execution of a lease. This can be particularly burdensome where you have several co-owners of a tract or a large number of tracts.

b. Selection Lease (lease executed): As used herein the term "Selection Lease" is intended to refer to an agreement which accomplishes the same purposes of the Seismic Permit with Option to Lease, but does so pursuant to a lease which has already been executed. Another approach would be to do so pursuant to an agreement which is then converted into a lease. With the first approach the concept is that you have a lease in place (using a standard oil and gas lease form), but you restrict the rights under the lease to geophysical operations for a certain period of time, include specific

provisions governing the seismic operations and provide for an additional payment which is required in order to conduct any operations other than the seismic operations.

These can be set up in a number of ways. In some instances, the area over which the geophysical operations are to be conducted is the same area as the intended lease area. In other instances, the area over which the geophysical operations are to be conducted is a broader area, and you will want to provide for selection ')f acreage or allow acreage to be released prior to making the payment which allows other rights to be exercised.

The advantage of the Selection Lease, when contrasted with the Seismic Permit with option to Lease, is that when you are dealing with numerous tracts and/or numerous undivided interest owners, you avoid the time and expense which may be involved in going back to the owners when you exercise the option to get the lease(s) executed.

3. Oil, Gas and Mineral Lease: The following is a review of common lease provisions which may have impact on seismic operations.

a. Right to Use Lease Premises:

(1) Standard Provision: The standard Bath lease form contains language in the granting clause granting the lessee the exclusive right to enter and use the lease premises for the "exploration" for oil, gas and other minerals from the land or acreage pooled therewith. See, e.g., Bath Form 42 CPM -New South La. Revised Six (6) Pooling: "Lessor ... hereby leases and lets unto Lessee, the exclusive right to enter upon and use the land hereinafter described for the exploration for, and production of oil, gas, sulphur and other minerals, together with the use of the surface of the land for all purposes incident to the exploration for and production, ownership, possession, storage, and transportation of said minerals ... (either from said land or acreage pooled therewith)" (emphasis added).

This is the clause granting the right of use. The right to conduct seismic operations has been traditionally viewed as a subset of the right to explore granted under the lease. You should note the limitation language on the property for which the exploration is being undertaken. This should normally not be an issue as a lessee would be seeking to obtain data to explore the leased premises. Under the appropriate set of facts it could become an issue if the lessee is utilizing the lease premises only to obtain data for exploring adjoining lands not pooled or unitized with the lease premises.

(2) Modifications: From a lessee's standpoint, you may wish to strengthen your right to conduct seismic operations by adding a more specific granting of the right to conduct seismic or geophysical operations. From a lessor's standpoint, some landowners, particularly large landowners, may exclude or reserve the right to conduct seismic operations or make the grant nonexclusive. In this manner they may obtain additional revenue

contracting with the seismic rights separately or being able to grant permission to others for other surveys. This will depend upon the individual situation, bargaining position of the parties, size of the property and other decision factors in including such provisions. As a practical matter, 3-D data is normally required to support the drilling of a well. Thus, it is in everyone's interest to obtain data and the landowner may not want to impede the data acquisition.

b. Surface Damages:

(1) Standard Provision: The standard Bath lease form contains the following provision:

The Lessee shall be responsible for all damages to timber and growing crops of Lessor caused by Lessee's operations.

Bath Form 42 CPM -New South La. Revised Six (6) Pooling, Paragraph 8. As this clause has been interpreted in the context of other oil and gas operations, a lessee is not liable for damages of other interests in the absence of negligence or unreasonable use of the surface, and if the words "of Lessor" remain, a surface lessee would not be entitled to recovery against a mineral lessee for timber and growing crops without negligence or unreasonable use. See *Roher v. Austral Oil Exploration* Co., 104 So.2d 253 (La. App. 1st Cir. 1958) (lessee not liable for other damages unless lessee was negligent); *Andrepont v. Acadia Drilling* Co., 231 So. 2d 347 (La. 1969) ("of Lessor" stricken and surface lessee entitled to recover as third party beneficiary); and *Gaspard v. Whitson,* 487 So. 2d 1249 (La. App. 3d Cir. 1986) ("of Lessor" remained and surface lessee denied recovery absent negligence or unreasonable use).

(2) Modifications: This clause is often modified such that lessee is liable for all damages caused by his lessee's actions. Also, larger landowners may include more extensive provisions with regard to surface damages and surface restoration.

c. Data: The standard Bath form contains no provisions requiring that data be furnished to the Lessor. With regard to data obligations, see the above discussion.

d. Surface Use Restrictions: The standard Bath form does not contain surface use restrictions or provisions. However, it is common to add surface use restrictions or a requirement that the lessor's consent be obtained prior to conducting surface operations on the property. These are normally aimed at drillsites for wells to be drilled, production and handling facilities and pipelines or flowlines. Care should be taken when relying upon an oil, gas and mineral lease to conduct seismic operations, to check for any such restrictions or notice provisions and to follow them. These provisions can be easily overlooked.

III. Lands Owned by the State of Louisiana

A. Background:

Scope: Because of time constraints this is not intended to cover such other areas as permits or regulations of the Department of Wildlife and Fisheries, oyster regulations and damage issues, coastal zone permits, permits required by parishes or other political subdivisions or permits or other regulations of other State or federal agencies.

Significance of Seismic Permits and Options on State Lands: The State of Louisiana is the single largest landowner in the State of Louisiana. There are now a significant number of 3-D seismic projects being undertaken in the transition zone and on State water bottoms.

Administration of Seismic Permits and Options on State Lands: The seismic permit and option program is administered by the Louisiana Department of Natural Resources (DNR), through the Office of Mineral Resources (OMR), and by the Louisiana State Mineral Board. Questions and form requests can be made to Mr. Frank J. Husband, a geophysicist with OMR (504-342-5285), Mr. Clayton Breland (504-342-4615), or Mr. Gus Rodemacher, Deputy Assistant Secretary (504-342-4615).

Procedures and Forms Subject to Change: It should be noted that the following is a review of the procedures and forms currently in use. However, many, if not most, of these are in draft form and are subject to change. It is recommended that you consult with the OMR prior to filing an application or submitting a bid to confirm the applicable rules, procedures and forms.

B. Statutory Provisions:

Pertinent Statutory Provisions: The following are the statutory provisions pertinent to seismic permits and contracts with the State of Louisiana.

LSA R.S. 30:208 (Exploration of Public Lands)

The State Mineral Board may explore and develop the mineral resources of lands belonging to the state which it might lease under Sub-part A of Part II of Chapter 2 of this Title.

LSA R.S. 30:209 (State Mineral Board, authority of)

In order to carry out the provisions of R.S. 30:208, the State Mineral Board may:

(1) Conduct geological and geophysical surveys of any kind, or cause them to be conducted on its behalf under contracts granting exclusivity of operations to the contracted party, and further providing for acquisition of seismic data by the state.

*****

(5) Do all other things which may appear to be necessary or

desirable.

LSA R.S. 30:209.1 (Acquisition of information)

A. The right of the State Mineral Board under RS. 30:209 to conduct or contract for geophysical and geological surveys and other operations on lands which the board might lease for the state in order to carry out the provisions of RS. 30:208, relative to exploration and development of mineral resources shall include the right to acquire and receive, either as owner in its own right or licensee, from the company acquiring and processing the data under the geophysical or geological surveys, any geophysical, geological, and engineering information and data acquired or processed from the surveys or operations conducted on any lands, whether public or private, for evaluation, administration, and development of the mineral resources of state-owned properties.

B. Information and data acquired as authorized by Subsection A of this' Section shall be confidential for all purposes consistent with the terms of acquisition and shall be made available only to the State Mineral Board, and the commissioner of conservation at the sole discretion of the board, who shall keep such information and data confidential and may use such information and data only in the lawful, official administration and development of publicly owned lands. Whoever knowingly and willfully violates the provisions of this Subsection shall be punished by the penalties provided by RS. 30:216.

LSA R.S. 30:211. (Geophysical and Geological Survey, and Public Lands Defined)

A. "Public lands" means lands belonging to the state or its agencies and which may be leased under Chapter 2 of this Title.

B. "Geophysical and geological survey" means magnetometer surveys, gravity meter surveys, torsion balance surveys, seismograph surveys, using either the reflection or the refraction method, soil analysis surveys which tend to show the presence or absence of hydrocarbons, electrical surveys, using either the Eltran or some similar method and any method utilizing short wave radio.

LSA R.S. 30:212 (Permits For Surveys on Public Lands)

The State Mineral Board shall have exclusive authority to grant permits to conduct geophysical and geological surveys on state owned lands and water bottoms. No person shall conduct a geophysical or geological survey on state owned lands and water bottoms without obtaining a permit. These permits shall be granted pursuant to rules promulgated by the State Mineral Board. No permit shall be granted covering lands over which the state has a mere servitude without consent of the owner of the abutting property. LSA R.S. 30:213 (Furnishing State Information Obtained Under Permits)

The commissioner of conservation, the State Mineral Board or any

other agency of the state shall not require the holder of a permit to furnish information secured under his permit prior to obtaining from the state a mineral lease affecting the property surveyed. If the permittee becomes a . mineral lessee of the state (upon the request of the commissioner of conservation or the State Mineral Board), he shall file maps showing the location of all shot points and detector or geophone set-ups located on the property and the dates on which they were used, together with the subsurface contours obtained as a result of the use of the points. This information shall not extend to lands beyond the boundaries of the public property surveyed. This information shall be furnished the commissioner of conservation or the State Mineral Board within ninety days after the request is made provided that ninety days have elapsed since the completion of the survey.

LSA R.S. 30:214 (Permit for Survey Entailing Use of Public Waters or Bottoms)

Any person who makes or causes to be made a geophysical survey entailing the use of shot points in any lake, river, or stream bed or other bottoms, the title to which is in the public, shall obtain from the State Mineral Board a special permit therefore. This permit shall be granted under the rules and regulations which may from time to time be promulgated by the Department of Wildlife and Fisheries for the protection of oysters, fish, and wildlife.

LSA R.S. 30:215 (Confidential Nature of Surveys and Data)

A. All surveys and data of every kind filed under RS. 30:213 shall be confidential, and available only to the assistant secretary of the office of conservation in the Department of Natural Resources and the State Mineral Board for their use in the proper administration and development of publicly owned lands.

B. Applications for permits under the provisions of RS. 30:210 and R.S. 30:212 shall be public records.

LSA R.S. 30:216 (Penalty)

Whoever knowingly and willfully violates RS. 30:211 through 30:215 or any rule or order of the State Mineral Board made thereunder shall be fined not less than one hundred dollars nor more than one thousand dollars or imprisoned for not more than six months, or both.

See also LSA RS. 30: 124 (lease of public lands by the board); 30:127 (bid and award of leases).

You should also note that in some instances there are special statutes governing the leasing and operating of other types of lands where the State Mineral Board administers the leasing and granting of seismic permits (e.g., certain refuges and wildlife areas)

Recent Amendments: LSA RS. 30:209 and 209.1, which appear in

their amended form, were amended in 1997 to more clearly address the State's authority to grant "exclusive" agreements and to improve the State IS rights to acquire data (including as a "licensee"). LSA RS. 30:209.1.B was also modified to change the requirement that the information and data be shared with the commissioner of conservation. Instead, the data and information are furnished to the commissioner of conservation "at the sole discretion" of the board.

C. Standard Seismic Permit:

This permit is often referred to as the "Standard Seismic Permit" or the "$11,000 Seismic Permit." It allows the Permittee to conduct geophysical operations over up to nine square miles of State acreage for the sum of $11,000. It is nonexclusive and the State does not obtain any 3-D data or information under this permit. This permit has been in use for some time, and was the only permit in use prior to the EGA program discussed below.

Standard Seismic Permit Rules and Procedures:

Nonexclusive: This is a nonexclusive permit. Permits and leases may be granted to other parties for the same lands for the same time period.

Term: The Permittee is authorized to conduct geophysical operations for a period of 12 months. No extensions may be granted.

Application: An application may be obtained from the OMR. The application should include an acceptable map of the survey area and a certified or company check for the proper amount of the fee.

Fee: For 3-D coverage the permit fee is determined by calculating the acreage of State-owned lands and/or waterbottoms within the survey area. Presently, one permit fee of $11,000 is required for every 9 miles of State-owned acreage.

Time to Obtain Permit: You are required to file the application at least 10 days prior to beginning project. The normal turn around time is approximately one week.

State Oil and Gas Leases:

(1) Standard Seismic Permit for Acreage under State Lease Without Addendum: The State Lease Form (Revised 1981) contains the following provision: "... does hereby lease, let, and grant exclusively unto the said Lessee ... for the purpose of exploring by any method, including but not limited to geophysical and geological exploration ... " (emphasis added). Therefore, with a State lease form containing only this provision, the Lessee had the exclusive right to conduct geophysical exploration. A permittee under a prior permit granted by the State may have needed to obtain the consent of the Lessee. In order to clarify the matter and insure a permittee had the right to conduct the survey without the consent of the subsequent Lessee, the below Addendum is now used.

(2) Permit for Acreage under State Lease With Addendum: Now State

leases being granted contain the following Addendum:

> Notwithstanding any language herein to the contrary, the rights granted herein exclusively to the mineral Lessee shall be subject to the surface usage for seismic and geophysical exploration by any seismic permittee of the state whose valid permit predates the effective date of this mineral lease and includes all or a portion of the surface area encompassed within the geographical boundary of the leased premises herein. The said seismic permittee shall owe the mineral Lessee no duty to share seismic or geophysical information acquired under the predating permit nor to reimburse the mineral Lessee for surface usage, but said seismic permittee shall not unreasonably interfere with the mineral Lessee's exercise of its rights acquired hereunder and shall owe the mineral Lessee reasonable reimbursement for any actual damages caused by the seismic or geophysical operations carried out under the predating permit.

Acreage Available for Permitting: Acreage will be available for a Standard Seismic Permit until the time of preliminary agency approval of an EGA proposal.

Seismic Permit Form: A copy of the permit may be obtained from the OMR. The terms and provisions are fairly brief and standard. However, you should note the following provision contained therein in bold print with reference to additional survey participants:

Failure to notify the Office of Mineral Resources in writing of any additional clients, geophysical shooting companies or geophysical survey lines added to the project permitted hereunder, in advance of adding to this permitted project, shall serve to nullify this permit, forfeit of the permit fee and loss of right to conduct geophysical survey for permittee for one year.

Exclusive Geophysical Agreements (EGA's)

EGA Program: Over the last few years the State Mineral Board has undertaken a new program in the form of Exclusive Geophysical Agreements (EGA's), whereby successful bidders obtain varying degrees of exclusive rights. The State instituted this program to encourage 3-D seismic activity on State lands, and to provide a means by which the State could acquire 3-D seismic information and data on State lands. There are three EGA's, the Exclusive Seismic Agreement I (EGA I), the Exclusive Seismic Agreement II (EGA II) and the Exclusive Seismic Agreement III (EGA III). EGA's are available solely for the shooting of 3-D seismic.

EGA I: This EGA is the least exclusive. With this EGA, the State will not grant any new EGA's or seismic permits in the nominated area during the Initial Term or the Option Term, if activated. However, the State can lease or accept nominations for lease, with any leases being awarded being awarded subject to the EGA in place. The Grantee has no rights to select acreage to lease.

EGA II: In the case of an EGA II, in addition to the exclusive rights provided under an EGA I, the Grantee shall also have the exclusive right to nominate the acreage for lease, and the State will not otherwise lease the nominated acreage, or any portion thereof, during the term of the agreement, except that a buffer zone of one-half mile around each preexisting lease will be in effect, which buffer zone will be available for lease nomination only by the neighboring Lessee or the Grantee.

EGA III: The EGA III is essentially an exclusive seismic permit with an option to lease. An EGA III is the same as an EGA II, except that the successful bidder shall also have the right, prior to the termination of the agreement. to select tracts for lease, with the bonus, rental and royalty having been established in the original bidding process.

Process for Obtaining/Awarding an EGA: The following is a review of the process involved in obtaining and awarding an EGA. Because this is a new and evolving process, it is strongly recommended that you contact the OMR staff and review the process and ask any and all questions applicable to your situation.

Initial Contact: Contact the OMR, through Mr. Frank J. Husband, Geophysicist (504-342-5285), or in his absence, Mr. Gus Rodemacher, Deputy Assistant Secretary (504-3424615). A date and time to meet with the staff of the State Mineral Board will be set. The area and type of EGA to be requested should be given. If this is an area that has been previously rejected by the State for EGA nomination, you may be advised of this at that time.

Meeting: The objective of the meeting is for the prospective nominating party to present the area of interest and the type of EGA being requested. The State does not require any detailed geology for this meeting and does not want to negotiate or discuss bid figures. They will also want to discuss information concerning your plans for the shoot to determine how serious you are, including perhaps whether you have talked to a seismic contractor, what other permits you have obtained, what kind of backing you have, etc. If other parties are interested in nominating the same acreage, the staff will also meet with those parties. Neither party is to be advised of the other party's interest.

As far as the size of an area which will be considered for nomination, prior versions of the EGA procedures provided for a maximum nomination of 50 square miles. The maximum size is now unlimited, but the size is subject to the discretion of the OMR staff and the State Mineral Board.

Staff Review: The staff will review the area of interest and will determine whether an EGA will be granted, and whether there are any special conditions for the granting of the EGA. The type of EGA and the level of leasing activity are some of the determining factors in deciding whether to award an EGA. If there has been a lot of leasing activity in the

area, it may not be appropriate to grant an EGA II or III, which would remove the acreage from commerce for up to two years.

If the staff determines that an EGA can be granted, they will then evaluate the area in order to set the minimum bid terms to be recommended, including the minimum per acre seismic fee. In the case of an EGA III, this will also include the minimum per acre bonus and rental and the minimum royalty. In setting the minimums the staff considers leasing activity, drilling activity in the area, geology and other factors. In a large area the staff may even consider different minimums for different portions of the area, if the circumstances warrant. If more than one application has been made, the staff will decide which application will be accepted for bid.

Preliminary Agency Approval: The staff's recommendations are then presented for input and approval within the agency.

Contact with Applicant: The applicant is contacted and advised of the minimum bid amounts and any other terms that the staff will recommend to the State Mineral Board. If these are not acceptable to the applicant, then the proposal may be withdrawn by the applicant by a request in writing.

Application: If the terms are acceptable to the applicant, then the applicant may apply to the OMR to have the acreage nominated. This is done by a nomination letter, which should include a plat and a legal description with XN coordinates (in the same manner as lease nominations), the type of EGA being sought and the application fee of $200.00.

Approval by State Mineral Board for Advertisement: The proposal is submitted to the State Mineral Board, which must approve the proposal prior to advertisement.

Advertisement: The nominated acreage is then advertised on the same delay basis as nominations for leases. The advertisement shall include a statement of the EGA being sought and the minimum seismic permit fee and, if applicable, the minimum bonus. rental and royalty.

Submission of Bids: Bids are then submitted using the EGA Bid Form, along with a certified check, cashiers check or bank money order for the full amount of the cash payment bid. In the case of an EGA III, a mandatory acreage selection may be included in the bid, which may allow for a lower cash payment. There is a blank for "Additional Consideration" to be included in the bid. It is uncertain how this is to be considered. This may depend upon the nature of the shoot. In order to be properly considered, it should be easily convertible into dollars and should be a mandatory obligation.

Awarding of EGA: On the date set, the State Mineral Board will open the bids and award the EGA. Normally this will be the highest bid. However, as in the case of leasing, the State Mineral Board takes the position that it has the authority and discretion to accept the bid which it considers to be in the best interest of the State.

Details of the EGA Program and Agreement Terms and Provisions: The following is a review of the details of the EGA program and a discussion of some of the terms and provisions found in the different forms of Agreements used. The State Mineral Board has not developed a form for an EGA I. It should be noted that this program and the forms used have been in a constant state of development. You should therefore be careful to get current information from the OMR and carefully review the form of any EGA awarded. You should particularly note that the provisions with regard to data to be furnished have been evolving and changing and will vary depending upon when the EGA was awarded. Also, the forms used by the State Mineral Board when it is acting on behalf of Refuges and Foundations will be different from those used for the other State EGA's. They tend to be shorter and less detailed. The State Mineral Board assists, but does not control, the administration and awarding of these agreements.

Common Elements for EGA's I, II and III:

(1) Term: The Initial Term of the agreement is 18 months, and the Grantee has an option for an additional six months, the Option Term, for an Additional Fee equal to 1/2 of the original amount.

(2) Grantee's Operations: Grantee is required to conduct, within the area described, a 3-D geophysical seismic operation wherein the grid pattern will encompass substantially all of the tract covered by the EGA, in order, to the extent possible, to yield full fold coverage on as much of the tract as possible. The acquisition phase must be completed within the Initial Period, or the Option Period, if activated. Failure to do so will subject the Grantee to a penalty to be discussed below. Earlier versions of the EGA program required that acquisition operations be commenced prior to six months after the effective date, but there is no requirement in the current version of the program.

(3) Subject to Existing Agreements: The EGA is granted subject to any existing oil and gas leases and other agreements for oil and gas development, including operating agreements. If these Prior Agreements terminate, then Grantee has the right to conduct operations on said acreage subject to paying the State the per acre fee for said acreage, unless, prior to the termination, Grantee entered into an agreement with the prior Lessee or owner and has paid for the right to conduct operations on said property.

(4) State's Rights to Data: The primary aim of the State in this program is to acquire data. The EGA provisions regarding the State's rights to data have changed significantly as the program has evolved. Currently the State's rights to data are as follows.

(a) Access to Data: The Grantee is to provide the OMR with access, in an ongoing manner as completed, to the 3-D seismic tape(s) for seismic interpretation and Grantee's interpretations thereof at a workstation and with the aid of a qualified workstation technician provided by Grantee.

(b) Data/Copies: Grantee shall provide a copy of the complete 3-D seismic tape(s) (in digital format, including the initial final processed, filtered and time migrated volume data set used for seismic interpretation) covering the Agreement property at the end of the Agreement Period (Initial Term, or the Option Term, if activated), if processing is complete, but in no event later than. six (6) months after the end of the Agreement Period.

(c) Hard Copies: Upon request by OMR, OMR shall be provided, at its selection, a limited number of hard copies of color displays of representative seismic cross sections and time slices, including any arbitrary profiles that may be selected.

(d) Reprocessed Data: If Grantee reprocesses the data acquired under the Agreement within five (5) years of the end of the Agreement Period, Grantee shall provide OMR with a copy of the tape within thirty (30) days after the completion of reprocessing.

(e) Interpreted Data: The State shall have access to Grantee's' interpretations of the data, including reprocessed data, for a period of five (5) years after the end of the Agreement Period either at a workstation provided by Grantee or at the office of OMR, at the option of OMR.

(f) Duty to Inform: Grantee shall have the responsibility of keeping OMR informed of all phases of ongoing operations, including acquisition, processing and reprocessing.

(5) Penalty: Failure of the Grantee to secure full and complete acquisition of data and to allow the Grantor the required access to said data, or the failure of the Grantee to select acreage in the case of a mandatory selection under an EGA III, is deemed to be an active default of the contract and subjects the Grantee to a penalty equal to the seismic fee for the Agreement. We understand that the State is considering changing this to a proportionate penalty (e.g., fail to deliver data as to *1/3rd* of the Agreement Property and you owe *1/3rd* of the seismic fee as a penalty).

(6) Force Majeure: If Grantee is prevented from commencing, continuing or resuming its operations by storm, flood, or other natural disaster or by governmental law, rule etc., the term of the agre3ment shall be extended on a day-for-day basis for a period not to exceed one year. It is important to note that crew availability and similar factors will not be considered to be force majeure events.

(7) Assignability: The rights and duties of Grantee, except under mineral leases acquired pursuant to the EGA, are not assignable or transferable. This is important to keep in mind when structuring exploration agreements or other agreements involving EGA Ill's.

(8) Release of EGA: The draft forms for EGA II and EGA III provide that Grantee's rights under the EGA shall terminate at the end of the Initial Term or the Option Period, if activated. Grantee is also obligated to execute and record an appropriate release evidencing said termination. Failure to do

so within 90 days of termination may . subject the Grantee to attorneys' fees, damages in the amount of $100 per day and additional compensatory damages.

Exclusive Seismic Agreement II: During the Initial Term or the Option Term, if activated, of an EGA II, the State will not consider lease nominations from other parties or nominations for EGA's and will not grant seismic permits. Also, the Grantee is given the exclusive right during said time period to nominate for leasing acreage covered by the EGA. Within the 1/2 mile buffer zone surrounding any existing leases, the State will also allow the neighboring lessee to nominate acreage for lease.

Exclusive Seismic Agreement III: The Grantee under an EGA III also has the right, prior to the termination of the agreement, to select, for lease, tracts of not more than 1500 acres each. The total acreage of all tracts selected may not total more than *1/3rd* of all State acreage within the nominated area. The draft form also provides, if a bid had so stipulated, for a mandatory selection of a set amount of acreage. There is also a buffer zone of *1/2* mile around existing leases. Up until the time that the Grantee selects acreage for lease, the neighboring Lessee may nominate acreage within the buffer zone for lease.

IV. Producer/Lessee Seismic Related Contracts

A. Seismic Permits:

The Seismic Permits to which we are referring in this instance are Seismic Permits executed by Lessees to permit other operators or seismic companies to conduct seismic operations across property covered by leases owned in whole or in part by such Lessees.

Necessary Consent:

a. Multiple Working Interest Owners (Co-owners of the same lease): See discussion above. *There is no eighty (80%) percent rule with respect to working interest owners co-owning a single lease.*

b. Working Interest Ownership Different as to Different Depths: See discussion above.

c. Joint Operating Agreements: The practice that some companies follow is to obtain the consent of the operator of a well or unit. This may, depending upon the risk one is willing to assume, be a viable practical approach (Le., in some instances the operator is the only party actively "managing" the asset, operator obtains data pursuant to permit and operator uses data for benefit of operator and non-operators). However, absent separate authorization, the operator under most joint operating agreement forms does not have the authority to represent or act on behalf of the non-operators in granting seismic permits.

Form to be Used: The following is a discussion of some of the terms and provisions which should be included.

a. Terms and Provisions from Landowner Permit: See discussion above.

Many of the same terms and provisions found in landowners permits are applicable.

b. Indemnity: A Lessee granting a permit should make sure it has indemnity provisions, especially to protect against any exposure it may have to its lessor.

c. Compliance with Lease: If there are any special provisions in the lease, the Lessee should make sure the Permittee is obligated to comply with same.

d. Any Necessary Consents: The Lessee will want to include a provision requiring that all necessary consents be obtained. A Permittee may wish to avoid including such a provision due to the *Lloyd* decision discussed above.

e. Data: Often Lessees will want to obtain the data. This is not always the case, because some Lessees have a policy themselves of not wanting to give other Lessees data and do not want to be obligated to reciprocate. The Permittee should recognize that its position may be stronger, vis-a-vis a nonconsenting landowner, by furnishing the Lessee with the data to insure that it is an operation under the terms and provisions of the lease. There are also ways of making the furnishing of the data more palatable from the standpoint of the party conducting the survey (e.g., delay time obligated to deliver data, restrict coverage area of data furnished, give Permittee the right to purchase the data at a set price, etc.).

Exploration Agreements: A major component of many Exploration Agreements which are being entered into is the acquisition of 3-D seismic data.

a. Structure of Transaction: The terms and provisions with regard to the acquisition of seismic data, like the Exploration Agreement itself, can take many forms.

(1) Data Acquisition: There are any number of ways in which the data may be acquired and owned. In some instances, the parties will acquire proprietary data, either by conducting their own surveyor by participating with others as part of a larger survey. In other instances, the parties will acquire "spec" data. In other instances they may combine (merge and reprocess) multiple surveys.

(2) Payment/Carry of Survey Costs: In some transactions the parties will share the costs according to their interests. In others, a party may bear a higher share of the costs to get into the deal or to balance another party's contribution of leasehold or a party may contribute seismic it has already acquired.

b. Issues to Consider When Drafting Seismic Terms and Provisions:

The following are some of the issues which should be considered.

(1) Data Obligation: If there is a data obligation, the agreement should clearly state the performance that is owed. The area to be covered by the survey should be adequately described. Due to potential problems which may arise, if the obligation is in terms of conducting . a survey as to a given area, it is advisable to qualify the obligation by requiring that substantially all of the area be surveyed. The format and parameters of the data should be provided or there should be a requirement that these be mutually agreed upon.

(2) Timing of the Survey and Delivery of the Data: You should consider addressing the timing of any survey obligation, including when the survey is to be commenced and when the data is to be delivered. You should consider allowing some flexibility due to delays which will likely arise, from permitting, to lining up a crew, to having the data processed.

(3) Sharing of Costs: You should address how the costs are to be shared. This should include costs of permitting, costs of the survey, processing costs and reprocessing. Any other items which are known should be addressed. You should also have provisions with regard to the reimbursement of costs incurred.

(4) Operator: You should provide who is to operate the survey. This may involve acquiring permits, options and leases, contracting with the geophysical company and contracting to have the data processed. Depending upon the complexity of the area, you may need more detailed provisions or even a separate management agreement.

(5) Ownership, Disclosure and Transfer of Data: In the case of a proprietary survey, there should be provisions as to how the data is to be owned and the rights and obligations between the parties. The percentage ownership of the parties should be stated. and there should be provisions as to the disclosure and transfer of the data. How long must the data be kept confidential? How are any revenues from the sale or license of the data to be shared? Can the data be disclosed/licensed to potential farmees or buyers? You should consider adding an exception to any transfer restrictions for instances where data must be given in order to obtain permits. You may want to include an agreed-upon license form for those instances where the data may be licensed to third parties.

(6) Exercise of Options: You should provide a manner of exercising any seismic options and selecting acreage. In the case of the State options these will often need to be held in the name of one party who will have to agree to exercise pursuant to the terms of the Exploration Agreement.

(7) Timing of Delivery of Data vs. Timing of Initial Well: You should consider whether all of the data must be delivered prior to the first well, or only a portion of the data or none of the data.

(8) Indemnity: There may be indemnities either by or in favor of the

operator or one of the parties with regard to injuries, property damage, trespass and other exposure.

(9) Force Majeure: In the case of a data obligation, you should consider whether permitting delays, lack of an available crew, processing delays and other similar occurrences should be acts of force majeure.

V. Geophysical Companies

A. License Agreements:

Seismic data, primarily 3-D data, has become a very significant component of the oil and gas industry and has become essential to finding and drilling prospects and wells. A significant portion of the data is not "owned" by the party using it. Rather, it is "licensed" from the data owner, whether it be a geophysical company or another operator. Because of the significance of the licensed seismic data and the amounts being spent on same, it is very important for companies to be familiar with and to comply with the terms and provisions of their data license agreements. It should be noted that the comments in this section are not restricted to "licensed data.1I They may, depending upon the agreements used, apply to co-owned proprietary data, where you may have similar obligations to co-owners of the data.

Competing Interests: Under a typical data license agreement, a licensee oil company pays a one time fee for the non-exclusive right to use data owned by the licensor. A licensor will want to maximize its revenues by receiving license fees for each disclosure or transfer of the data. A licensee will not only want to use the data, but will also want to be able to disclose or transfer the data to nonlicensed third parties as business needs dictate (e.g., farmout, sale of assets, etc.). These competing interests are addressed in the terms and provisions of the data license agreement in terms of the confidentiality obligation of the licensee and any authorized exceptions.

Data License Forms Utilized: The data license forms will vary from company to company. In 1989 and 1990, due to problems being experienced, there was a major effort undertaken by the International Association of Geophysical Contractors ("IAGCII)to come up with a set of recommendations for the licensing of proprietary seismic data. The result of this effort, copies of which may be obtained from the IAGC (713-871-6444), was the following: (1) Letter from the IAGC to the Geophysical Industry, dated October 2, 1990; (2) Bulletin from the IAGC, entitled "Geophysical Data Licensing Recommendations Available to Petroleum Industry Explorationists," dated January 22, 1990; (3) Guidelines for the Licensing of Proprietary Geophysical Data, dated January 18, 1990 t together with suggested provisions for utilization in seismic data agreements (hereinafter "IAGC Model Form"). The IAGC Model Form contains a suggested form with various terms and provisions and alternative

terms and provisions. The IAGC makes it clear that these are suggested forms and those companies are free to negotiate any terms that they feel are appropriate. The writer's experience in reviewing various forms used by different geophysical companies is that most seem to utilize derivations of the IAGC Model Form, but there are still many that utilize their own forms.

***Read* Your License Agreements:**

a. Review Prior to Signing License Agreement and Prior to Signing Supplements: It is important to review and carefully consider the terms and provisions of each license agreement prior to execution. You should consider the deal and your individual circumstances and needs and make sure that you can utilize the data in the manner you need to. Depending upon the issue and your bargaining position, you may be able to negotiate changes to the form to accomplish your goals in a manner satisfactory to the licensor/data owner. In most instances, a data license agreement will cover data delivered at that time and future data that are purchased. As data is delivered, a "supplement' to the data license agreement will be executed as to each data set. Companies may acquire licensed data for differing projects, with different needs under different circumstances. Typically, the same data license agreement will be used and a new supplement will be executed. Again, prior to committing to subsequent data, you should go back and review the data license agreement to make sure that it works for the new project.

b. Consequences of Failing to Comply with License Agreement: Failure to abide by the terms and provisions in license agreements can, depending upon the agreement, have severe consequences. A full discussion of these is beyond the scope of this paper. There may be liability for breach of contract or causes of action under various trade secret laws or jurisprudence. Additionally, many data license agreement forms contain broad provisions such that a breach of any term or provision of the agreement results in an automatic termination of the license agreement requiring return of the data. Potentially in some situations this could have broader implications where a company has acquired numerous sets of data under the same data license agreement with numerous supplements. This may not always be a problem as a practical matter, because the licensor may not be aware of the breach or, if aware, may not act upon it or may waive it because of the business relationship. Additionally, many will allow a limited time period within which to cure the breach. However, it is better to be familiar with these terms and provisions and to attempt to comply with them or seek waiver or agreement in advance, rather than to have potential liability or risk losing the data.

c. Coordination: In order to insure that the proper data license agreement and supplements are negotiated and complied with, it is important that there be coordination and communication between a company's legal department (and/or outside counsel), geophysicists, land

department, and others involved in reviewing or dealing with the data. Most companies already have tracking systems for various land related contractual obligations (e.g., lease, operating agreements, AMI's, gas or oil purchase contracts). Consideration should be given to setting up similar systems with regard to data obligations, or to including data obligations within the same system. Of course, like other systems which track or highlight contractual provisions for compliance, they should not be used as a substitute for consultation with the company's legal department or other individual responsible for the data issues, rather as a way to improve compliance and maintain the value of the asset.

Selected Data License Agreement Terms and Provisions:

The following are . some terms and provisions typically found in data license agreements or issues typically addressed in data license agreements. Many of the discussed terms are found in the IAGC Model Form. However, in this paper we will address these provisions generally without specific reference to the IAGC Model Form, because they are also found in other forms and derivations of the IAGC Model Form.

a. Confidentiality: The overriding provision in a data license agreement is the obligation to maintain the confidentiality of the data and to not disclose, transfer, or share the data except as authorized under the agreement.

b. Data: You should look to see how the term "data" is defined in the data license agreement. Some licenses will include "derivatives" or "interpreted products" within the definition of data and/or the coverage of the license.

c. Related Entity Disclosure: Most data license agreements will allow under certain circumstances the disclosure of the data to "Related Entities." These provisions vary, but are usually limited to certain types of related entities (e.g., subsidiaries, parent companies, etc.) as of the date of the agreement.

d. Consultants: Most data license agreements allow the licensee to make the data available to consultants for and on behalf of the licensee. Most require the consultant to sign a confidentiality agreement and to return the data after the specified use. Many will require that the consultant utilize the data on licensee's premises.

e. Third Party Acquisitions: A Third Party Acquisition under many data license agreements is a transaction by which a third party acquires 100% of the voting stock or otherwise gains effective control of the licensee or acquires all of the petroleum assets of a company. Depending upon the data license agreements, a Third Party Acquisition may be allowed, a transfer fee may be due and/or the data license agreement may terminate. Also, some forms will allow limited disclosure to a Prospective Purchaser (similar in effect to an advertisement), but will not allow disclosure or transfer in the event the transaction takes place. Prior to setting up any data rooms where seismic data, or the derivatives thereof, you should review any

applicable seismic licenses.

f. Third Party Business Transactions: This is an important area of consideration for the typical oil and gas operator. These provisions address the extent to which data may be disclosed, transferred, or shared with third parties under operating agreements, joint bidding agreements, farmouts, and other agreements, including exploration agreements. In some instances the data may be disclosed in a limited manner to a Prospective Purchaser or a Prospective Partner, but may not be disclosed or transferred once the relationship exists. Some agreements will prohibit disclosure or transfer, while others will allow the transfer, or in effect a new license, to the third party for a specific area at a reduced or fraction of the original price. This is an area that should be considered not only when dealing with "spec" data and geophysical companies, but also when parties jointly acquire proprietary data under Exploration Agreements. You should attempt to anticipate whether you will have the need to allow future farmouts of acreage and whether farmees should be afforded the right to use the data as to the farmout acreage. For example, one party to an Exploration Agreement may not to want to participate in a prospect well and may be out as to a specific prospect area or may want to bring in a third party in its place. In the event of forfeiture by one party, the other may want to farmout that interest to a third party. In order to be able to bring in the third party farmee, you may need the flexibility under the provisions of the Exploration Agreement dealing with data rights and ownership to grant a license to the third party farmee as to the prospect area. Also, prior to setting up any data rooms or making presentations to prospective partners or purchasers involving seismic data, you should review any applicable license agreements.

g. Assignment: Most license agreements will prohibit transfers or assignment without the prior written consent of the other party. In most instances, this will not apply to merger transactions because merger transactions are not assignments of assets and are instead a consolidation of the entities. However, many license agreements also contain "change of control" provisions which may, depending upon the circumstances, be triggered and result in termination of the license agreement and/or transfer fees being due.

B. Master Service Agreements:

A detailed discussion of Master Service Agreements (contract between a geophysical company and an operator for a proprietary survey) is beyond the scope of this paper. However, a few pertinent provisions will be addressed.

Permit Responsibility: These provisions will provide for who will be responsible for obtaining the necessary permits or authorizations, the Contractor or the Client, or either at the option of the Client. These will usually also tie into the bid or price for the job and what is covered. As an

oil and gas operator, you should consider providing that this matter be at the option of the Client, to maintain flexibility. If it is set up for the Contractor to obtain the necessary permits or authorizations, there should be a specified standard of care.

Permit Indemnity: These provisions will provide for indemnity from the Client to the Contractor, and/or from the Contractor to the Client in the event of claims being asserted for trespass, including claims relating to geophysical trespass. Obviously, depending upon whether you are the Client or the Contractor will influence which way you want the indemnities to run. The point is, however, that you should be aware of these provisions and review them carefully in the context of the project being conducted and the other terms of the deal.

Client Representative: These provisions will provide for Client Representatives to direct the Work of the Contractor in the field. These provisions are often used from the geophysical or technical standpoint, and often deal with such matters as who receives data or information in the field. You may wish to involve the in-house or contract land man in an effort to try to prevent trespass and to coordinate contact and dealings with landowners.

Downtime: In drafting and reviewing the Master Service Agreement and any supplements thereto, you should carefully consider, in light of the particular circumstances of the project (e.g., transition zone) and potential causes of delay, how the risk of any delay and downtime is allocated between Client and Contractor, and what, if any, downtime charges are owed. The case of *Seitel Geophysical, Inc. d/b/a Eagle Geophysical v. Greenhill Petroleum Corporation,* 1996 U. S. Dist. LEXIS 8376 (U.S. Eastern District La. 1996), is illustrative of the issues and problems that can occur when projects are delayed. The dispute involves a seismic survey performed by Eagle for Greenhill at Grand Bay. The exact nature and time of the delay is difficult to determine from the decision. In any event, Eagle asserted various claims against Greenhill, including $666,230 for amounts alleged to be due for standby time, and Greenhill counterclaimed for $1,439,238.37, including standby charges it had accumulated and claims for lost revenue caused by the delay (apparently for production). The court found the standby time provision ambiguous, construed it against the' drafter, Eagle, and awarded Eagle *$1n,650* in downtime standby charges. The court also noted that some of the downtime was caused by shrimper disruptions which the court found to be within the Force Majeure clause of the Master Service Agreement, which covered "accidental damage to equipment or any cause outside the control of CLIENT or CONTRACTOR." The court denied Greenhill's claim for delayed production, finding that Eagle had performed the survey within a reasonable time period, considering the circumstances.