



# **2019 OCS ADVISORY BOARD SUMMER SEMINAR PROGRAM**

## **Update on Recent Court Decisions, IBLA Decisions, and Other Regulatory and Policy Issues Impacting the OCS**

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**August 20, 2019**

Prepare to ... ~~BE ENTERTAINED~~  
**YAWN**



# Some Inspiration Instead



# Let's Start With ...

# Updates on Recent Court Decisions





## Update on Recent Court Decisions

### ***Doiron v. Specialty Rental Tools, et al.*, 879 F. 3d 568 (5<sup>th</sup> Cir. 2018)**

- **Is the contract a maritime contract?**
- **Why important?**
  - **If the contract was maritime, general maritime law permitted enforcement of the indemnity provision.**
  - **If not, Louisiana law controlled, and the LOIA would preclude indemnity.**
- **"After briefing and argument, the Court has decided to adopt a simpler, more straightforward test consistent with the Supreme Court's decision in *Norfolk Southern Co. v. Kirby* for making this determination.**



## Update on Recent Court Decisions

### ***Doiron v. Specialty Rental Tools, et al.*, 879 F. 3d 568 (5<sup>th</sup> Cir. 2018)**

- **What did the Supreme Court say in *Norfolk v. Kirby*?**
- **Need to look to the “the nature and character of the contract, and the true criterion is whether it has reference to maritime service or maritime transactions.”**
- **Based on *Kirby*, the Fifth Circuit promulgated a simplified Two-Part test:**
  - **First, is the contract one to provide services to facilitate the drilling or production of oil and gas on navigable waters?**
  - **Second, if yes, does the contract provide or do the parties expect that a vessel will play a substantial role in the completion of the contract?**
- **If the answers to these questions is yes, then the contract is maritime.**



## **Update on Recent Court Decisions**

### ***Parker Drilling Management Svcs., Ltd. v. Newton, 139 S. Ct. 1881 (2019)***

- **United States Supreme Court decision.**
- **Split in authority between the Fifth Circuit and the Ninth Circuit:**
  - **Fifth Circuit: Under OCSLA, “state law only applies to the extent necessary to 'fill a significant void or gap' in federal law.”**
  - **Ninth Circuit: State law is “applicable” under OCSLA whenever it “pertains to the subject matter at hand” and is not “inconsistent with federal law under OCSLA;” inconsistency between state law and federal law only occurs “if they are incompatible, incongruous, or inharmonious.”**



## Update on Recent Court Decisions

### ***Parker Drilling Management Svcs., Ltd. v. Newton*, 139 S. Ct. 1881 (2019)**

- **United States Supreme Court held: ". . . , to the extent federal law applies to a particular issue, state law is inapplicable."**
- **In summary, the 5th Circuit's guidance as to application of an adjacent state's laws when needed as a federal law gap filler was recognized by the United States Supreme Court which cited to *Continental Oil Company v. The London Steam-Ship Owners Mutual Insurance Association, Ltd.*, 417 F.2d 1030 (5<sup>th</sup> Cir. 1969).**



## Update on Recent Court Decisions

### ***Parker Drilling Management Svcs., Ltd. v. Newton*, 139 S. Ct. 1881 (2019)**

- **The test in the *Continental* 5th Circuit case acknowledged by the United States Supreme Court can be summarized as follows:**
  - ". . . the deliberate choice of federal law, federally administered, requires that 'applicable' be read in terms of necessity - necessity to fill a significant void or gap."**
- **There must be an actual void or gap in federal law for state law to apply; state will not only as an extension of federal law or as a supplement to federal law on any point where there is actual federal law.**



## Update on Recent Court Decisions

### ***Apache v. W&T*, 2019 WL 3143769 (5<sup>th</sup> Cir. 2019)**

- **Case involved P&A of 3 Deepwater GoM wells.**
- **Non-operator, W&T, wanted to use an intervention vessel (the *Helix-534*).**
- **Operator, Apache, chose to use 2 drilling rigs (the *Onyx* and *Ensco*).**
- **W&T refused to sign AFEs approving use of the rigs for P&A.**



## Update on Recent Court Decisions

### ***Apache v. W&T*, 2019 WL 3143769 (5<sup>th</sup> Cir. 2019)**

#### ➤ **SDTX (Judge Hittner):**

- **Jury awarded Apache \$43.2 MM for breach of JOA.**
- **Jury, however, offset award by \$17 MM for Apache's alleged bad faith.**
- **Judge Hittner set aside jury's offset and bad faith finding as being inconsistent with operator discretion under JOA and Louisiana law.**
- **In order to avoid liability for bad faith, W&T needed to establish that Apache failed to perform under the JOA and that such failure caused W&T's breach, which it failed to do.**

#### ➤ **Fifth Circuit Affirmation**

- **Affirmed \$43.2 MM jury verdict.**
- **Did not recognize \$17 MM offset for bad faith.**
- **Rehearing *en banc* denied by the Fifth Circuit on August 13, 2019.**



# Update on Recent Court Decisions

## ***TOTAL v. Marubeni*, USDC SDTX**

- **3 intertwined cases dealing with P&A of the Canyon Express Assets.**
- **Cases involved P&A of 2 (of the 3) Canyon Express fields and a 47 mile long pipeline system.**
- **Total previously assigned its interest in the 2 Canyon Express fields and the pipeline system to ATP and claimed it was no longer liable for P&A.**
- **Marubeni performed P&A and sought Total's proportionate share of ATP's share of the P&A costs.**
- **3 main issues is dispute:**
  - **Did Marubeni perform the requisite P&A Activities consistent with expectations under the applicable operating agreements?**
  - **Did Marubeni appropriately account for all of the P&A expenses across the 3 fields and the pipeline system?**
  - **What impact did certain motions and orders in the ATP bankruptcy case have on the rights, duties, and responsibilities of TOTAL and Marubeni?**



# Update on Recent Court Decisions

## ***TOTAL v. Marubeni*, USDC SDTX**

### ➤ **SDTX (Judge Atlas)**

- **Granted Marubeni motion for summary judgment finding Total liable for the Canyon Express Pipeline System P&A liabilities under the applicable operating agreement and through subrogation/contribution.**
- **Granted a motion in limine excluding any evidence as to a damage offset for value Marubeni received from the ATP bankruptcy.**
- **Parties stipulated to damages in favor of Marubeni for \$12.6 million.**
- **Case is presently on appeal before 5th Circuit.**

### ➤ **SDTX (Judge Gilmore)**

- **Granted Marubeni motion for summary judgment finding Total liable for Aconcagua (MC 305) P&A liabilities under the applicable operating agreement and through subrogation/contribution.**
- **Denied a motion in limine excluding any evidence as to a damage offset for value Marubeni received from the ATP bankruptcy.**
- **At trial on damages, the jury awarded Marubeni \$21.6 million, deducting \$11.4 million from the award for value Marubeni purportedly received from the ATP bankruptcy.**
- **Case is on appeal before 5th Circuit.**

### ➤ **SDTX (Judge Hughes)**

- **Cross-Motions for Summary Judgment pending.**



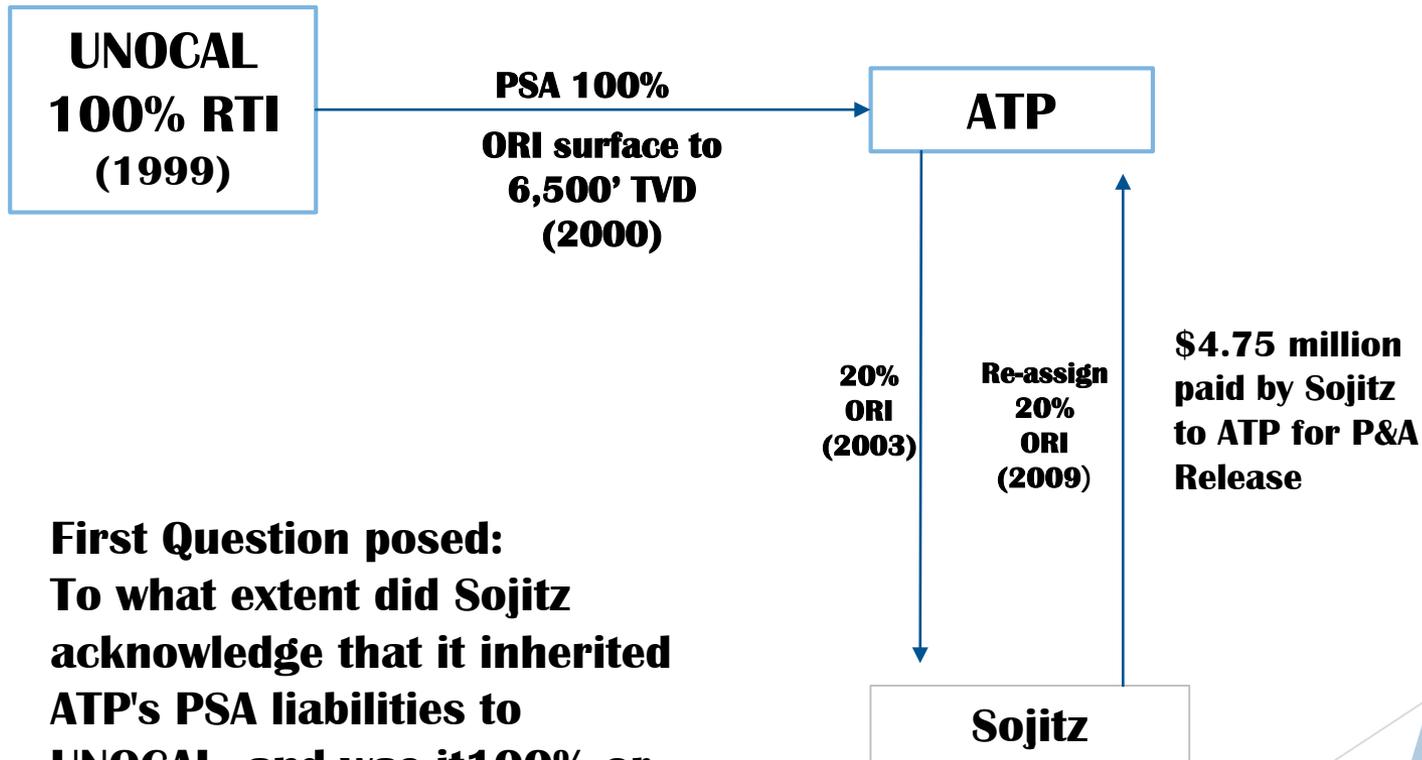
# Update on Recent Court Decisions

## ***Sojitz v. UNOCAL, USDC SDTX***

- **Case involved P&A of 2 GoM fields (GB 142 and GB 186).**
- **Both parties were predecessors to ATP and no operating agreement amongst themselves.**
- **Union assigned shallow operating rights to ATP.**
- **ATP assigned 20% of operating rights to Sojitz.**
- **Sojitz re-assigned 20% back to ATP.**



# Update on Recent Court Decisions



**First Question posed:  
To what extent did Sojitz  
acknowledge that it inherited  
ATP's PSA liabilities to  
UNOCAL, and was it 100% or  
only 20%?**

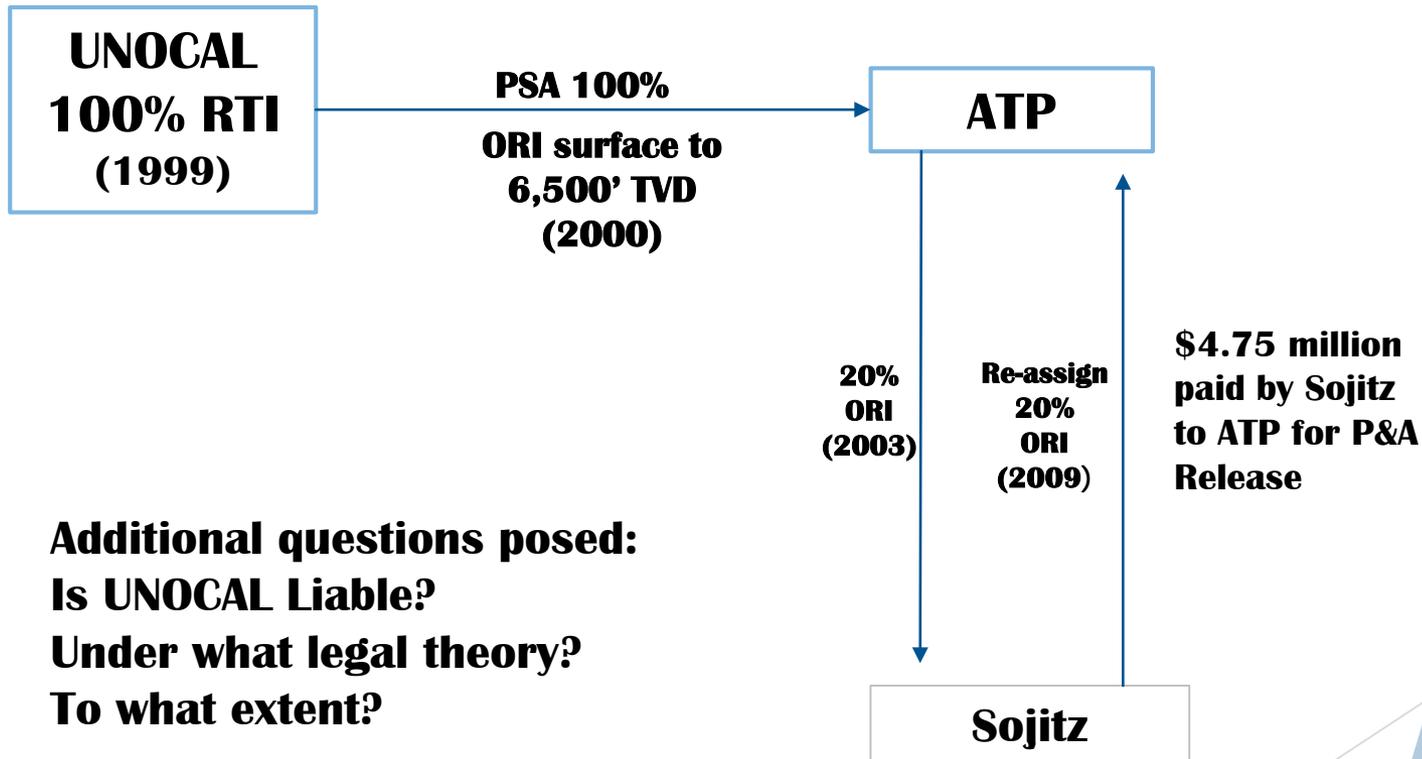


# Update on Recent Court Decisions

## ***Sojitz v. UNOCAL*, USDC SDTX**

- **After ATP bankruptcy, BSEE called on Union and Sojitz to P&A.**
- **Sojitz performed P&A and Union denied liability.**
- **SDTX (J. Hittner):**
  - **Granted Sojitz motion for summary judgment finding Union liable under equitable subrogation.**
  - **"While there is no contract directly between Union and Sojitz, the Court will consider any other contracts that existed to determine who must bear the cost of decommissioning. The Court examined the Union Agreement between Union and ATP, and the agreements between ATP and Sojitz (the Participation Agreement, OOA, and Purchase and Sale Agreement)."**

# Update on Recent Court Decisions





# Update on Recent Court Decisions

## ***Sojitz v. UNOCAL, USDC SDTX***

- **"[T]he Court finds Sojitz is subrogated to the rights of the government to seek reimbursement for its decommissioning costs."**
- **"Sojitz already paid ATP once for the estimated cost of decommissioning and was validly released. . . . Therefore, Union should be held liable for the remaining decommissioning costs which ATP was unable to pay."**
- **"The Union Agreement did not require Union's consent for ATP to assign any of its interest. Nor did it address ATP's ability to release an assignee from liability upon reassignment back to it, and therefore did not require Union's consent."**
- **District Court awarded Sojitz \$8.4 MM for P&A of GB 142 and GB 186.**

# Recent Court Decisions

## Any Questions ?



**Let's continue with...**

# **An IBLA Decision**



# IBLA Decision

## ***Taylor Energy Company LLC (193 IBLA 283)***

- **IBLA appeal concerning BSEE's denial of a series of departure requests from certain of Taylor's decommissioning obligations at MC 20.**
- **In 2004, Hurricane Ivan had toppled the MC 20 platform:**
  - **More than 20 wells buried under 100 feet of mud.**
  - **Sheen appearing on surface.**
- **9 intervention wells drilled to eliminate the sheen.**

# IBLA Decision

- ***Taylor Energy Company LLC (193 IBLA 283)***
  - **After intervention drilling, USCG, BSEE and Taylor participated in a series of technical workgroups/workshops that determined that "[additional] well intervention would result in either a higher probability of an adverse environmental event or a worse consequential environmental event, or both."**
  - **Thus, the consensus recommendation was that "no additional intervention well should be drilled because the ecological risk of drilling those wells outweighed any ecological benefits from plugging the wells."**

# IBLA Decision

## ***Taylor Energy Company LLC (193 IBLA 283)***

- **Based on those findings, Taylor filed a departure to be excused from performing additional intervention/P&A work at MC 20 (among other departure requests).**
- **BSEE denied the request because "hydrocarbons are still escaping from the sea flow and entering the environment" and because there was "no clear evidence . . . that the hydrocarbons are coming from contaminated sediment and not from leaking or unplugged wells."**
- **BSEE's denial did not require Taylor to actually perform any work, but noted "the possibility that future plugging and abandonment work . . . may be required."**



# IBLA Decision

## ***Taylor Energy Company LLC (193 IBLA 283)***

- **The IBLA affirmed BSEE's decision.**
  - **Although recognizing that the "current record" and the "current state of knowledge" might not support the drilling of additional intervention wells, the IBLA found that BSEE could "defer" its decision to wait for "advances in technology."**
  - **"[W]e do not find BSEE is required to grant a departure request or approve alternate procedures based on the current state of knowledge or that it cannot defer granting a request to wait for advances in technology or a greater understanding of the undersea environment (e.g., greater certainty on the cause of continuing hydrocarbon releases that result in the sheen). Taylor claims BSEE's decision must be based on the 'current record' and that doing otherwise is arbitrary and capricious. We find nothing in OCSLA or its implementing rules that prevents BSEE from deferring its decision . . . ."**

# IBLA DECISION

## Any Questions ?





# Let's Finish With ...



# Regulations & Policy



# REGULATIONS & POLICY

## Financial Assurance

- **March 6, 2019 Statement of Walter Cruickshank to House Committee on Natural Resources, Subcommittee on Energy and Mineral Resources.**
  - **Executive Order 13795 (*America's First Energy Policy*) and Secretarial Order 3350 (*America-First Offshore Energy Strategy*) called for reconsideration of NTL 2016-N01.**
  - **BOEM's priority is to better align financial assurance requirements with realities of aging offshore infrastructure.**
  - **Proactively implementing a comprehensive Risk Management and Financial Assurance Program to modernize its regulatory regime.**
    - **The Program will develop risk governance structures, including revised bonding and financial assurance regulations.**
    - **The Program will develop general and project-specific risk management strategies and procedures.**
    - **The Program will monitor the financial strength of offshore lessees to ensure proper levels of bonding/financial risk mitigation measure are in place to protect taxpayers.**



# REGULATIONS & POLICY

## Financial Assurance

- **So, where are we?**
  - **As the process within the federal government continues to unfold, sole liable properties are the primary focus.**
  - **Not many financial demand letters being issued at present.**
  - **What we are hearing about the new rulemaking:**
    - **No actual timeline for promulgation of rulemaking at present.**
    - **More hard and fast criteria for financial assurance requirements in lieu of BOEM Regional Director discretion.**
    - **Audited financial statements and reserve reports may become even more important.**
    - **May be some clarity included in hierarchy for demands.**
    - **Office of Management and Budget still needs to review.**



# REGULATIONS & POLICY

## Financial Assurance

➤ **April 11, 2019 letter from API to Secretary Bernhardt:**

**Urging development of "predictable process that requires financial security from the current lease owner" and "advancing a contingent liability framework (reverse chronological)" such that "if all current co-lessees (lease owners) default in fulfilling their decommissioning obligations; only in the event of such a default should the government look to prior lease owners (that is, predecessors in the chain-of-title) to address the defaulted obligations. When this occurs, DOI should pursue those predecessors in reverse chronological order."**



# REGULATIONS & POLICY

## Financial Assurance

- **July 30, 2019 letter to Secretary Bernhardt from Representatives Grijalva and Lowenthal (U.S. House Committee on Natural Resources):**
  - **After commending on stats and facts compiled by the GAO, the Committee leadership weighed into this complicated matter by stating: "We are concerned with BOEM's decisions to halt the 2016 NTL and rescind the sole liability letters, and its continued failure to develop new financial assurance regulations. With U.S. taxpayers on the hook for potentially billions of dollars of decommissioning costs and platform removals, these actions are unnecessarily risky."**
  - **The Committee members requested substantial documents regarding communications with "employees and persons representing the oil and gas industry, including but not limited to the API, NOIA, Gulf Energy Alliance, Gulf Economic Survival Team, and IPAA."**



# REGULATIONS & POLICY

## Financial Assurance

- **August 8, 2019 letter to Secretary Bernhardt from Louisiana Senators Cassidy and Kennedy:**
  - **“Louisiana has a storied history in supporting energy production in the Gulf of Mexico, production critical to our Nation and fundamental to achieve the Administration's energy policy objectives.”**
  - **“ . . . Stakeholders in the Gulf of Mexico tell us there remains continued uncertainty, because the issue has not been resolved.”**
  - **“We remain concerned, however, because the lack of clarity regarding updated financial assurance requirements can cloud capital investment decisions in the Gulf of Mexico, potentially impacting jobs across the oil and gas supply chain in Louisiana.”**
  - **“Therefore, we respectfully request the Department move to resolve this matter soon and issue a reasonable and workable financial assurance framework that further advances America’s new-found energy dominance.”**



# REGULATIONS & POLICY

## Financial Assurance and BSEE

- **In addition to BOEM's work on an updated financial assurance rule and new policies, BSEE is working on a companion rulemaking to address decommissioning in bankruptcy situations with an interplay with BOEM financial assurance.**



# REGULATIONS & POLICY

## **BSEE NTL No. 2017-N02 – *Reporting Requirements for Decommissioning Expenditures on the OCS* – Effective March 2, 2017**

- **Likely a direct result of the proposed new Financial Assurance NTL from BOEM.**
  - **"BSEE will use this information . . . to improve estimates of future decommissioning costs", which it will share with BOEM for setting financial assurance requirements.**
- **Submitted by Operator within 120 days of completion of each decommissioning activity, unless extended by BSEE.**
  - **BSEE wants a single, complete submission with a reporting period extension than a preliminary summary followed by supplements.**
  - **Rely on COPAS for methods, procedures and expenditure classifications.**
  - **Failure to timely submit could result in INC.**
- **This data collection process indicates that BSEE's assessments for shallow water wells may be on the low side.**



# REGULATIONS & POLICY

## **BSEE NTL No. 2017-N04 – Pipeline ROW Grant Assignments to Multiple Pipeline ROW Holders – Effective August 18, 2017**

- **Also likely a direct result of the proposed new Financial Assurance NTL from BOEM.**
  - **Sole liabilities require first priority security.**
  - **ROWs often owned by multiple parties (joint development operations) had no way to reflect real world in BOEM/BSEE ownership/liability world.**
  - **This NTL changed that.**
- **Process: single ROW grant applicant files to establish ROW; Once ROW is established, Form BSEE-0149 submitted to assign interests to multiple holders.**
- **Must also designate pipeline operator to act on behalf of all ROW grant holders.**
- **The Row Operator will be BSEE's point of contact, but for relinquishments and modifications, which must be signed by all ROW grant holders.**



# REGULATIONS & POLICY

## Marine Minerals Program

- **Discussed by Director Cruickshank in his Mach 6, 2019 statement.**
- **BOEM is steward of OCS sand, gravel and shell resources; manages responsible use of these resources through its Marine Minerals Program. These resources are critical for shore protection, beach nourishment, and wetlands restoration projects along Atlantic and Gulf of Mexico coasts.**
- **Increasing trend in number of requests for OCS sediment and volume allocated per year, due to diminishing resources in state waters and high frequency of recent storms along these coasts.**



# REGULATIONS & POLICY

## Marine Minerals Program

- **BOEM collaborating with USGS to determine which critical minerals are located on the OCS.**
  - **July 12, 2019 – New BOEM Report Projects Future OCS Sand Resource Needs.**
  - **To help prepare for and meet future sand resource needs to about 2027, the Marine Minerals Program (MMP) funded a study entitled “*Projected OCS Sand Resource Needs and Effort.*”**
  - **The report outlines several possible scenarios to help estimate future need and the research required to meet the demand.**



# REGULATIONS & POLICY

## Marine Minerals Program

- **BOEM launched Marine Minerals Information System (MMIS) as part of the National Offshore Sand Inventory to ensure all parties have access to detailed offshore information critical to responsible decision-making in relation to disaster recovery and coastal community resilience planning.**
- **Presentation about the inventory can be found at:**  
<https://www.youtube.com/watch?v=y-ToyIleBdM>
- **MMIS accessible at:**  
<https://mmis.doi.gov/BOEMMMIS>



# REGULATIONS & POLICY

## Marine Minerals Program

- **What does this mean for us?**
  - **It is our understanding (from presentations we've attended) that abandonment in place of OCS infrastructure will not be permitted in any designated Sand Resource Areas.**
  - **As States receive BP settlement funds, more coastal restoration projects are underway, so more Marine Minerals are requested for designation.**
    - **State of Louisiana just requested 100+ additional blocks be designated by BOEM.**



# REGULATIONS & POLICY

## April 11, 2019 Office of Management and Budget (OMB) Memorandum



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503  
April 11, 2019

M-19-14

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM:

Russell T. Vought  
Acting Director

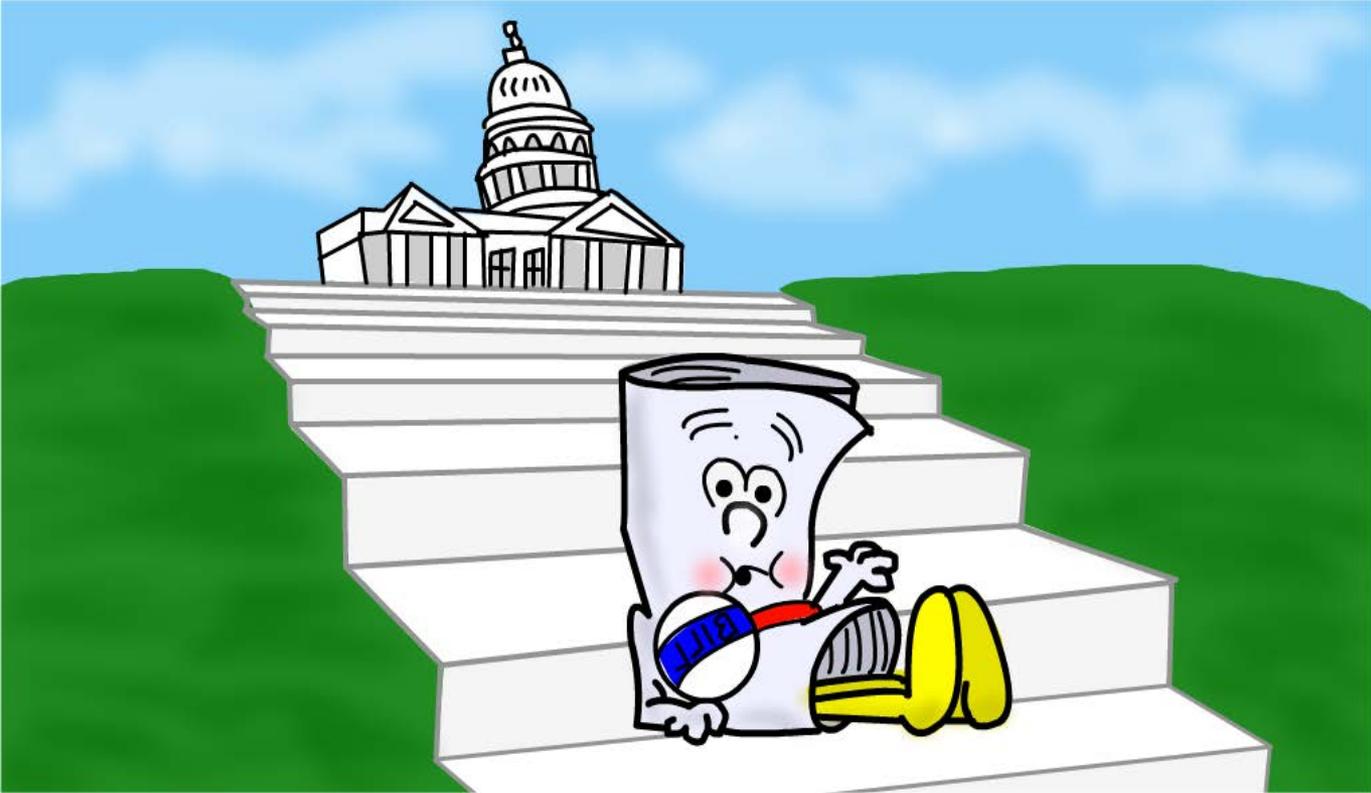
A handwritten signature in black ink, appearing to read 'R. Vought', written over the printed name.

SUBJECT: Guidance on Compliance with the Congressional Review Act

### I. Introduction

The Constitution vests all Federal legislative power in Congress.<sup>1</sup> In our system of separation of powers, agencies may prescribe rules only insofar as they have statutory authority delegated to them by Congress. The Congressional Review Act (CRA),<sup>2</sup> enacted in 1996, establishes a mechanism by which Congress is able to exercise direct oversight of Federal agency action in real time, consistent with its role as the sole constitutionally authorized legislative authority. This Memorandum reinforces the obligations of Federal agencies under the CRA in order to ensure more consistent compliance with its requirements across the Executive Branch. It also sets forth guidelines for analysis that the Office of Information and Regulatory

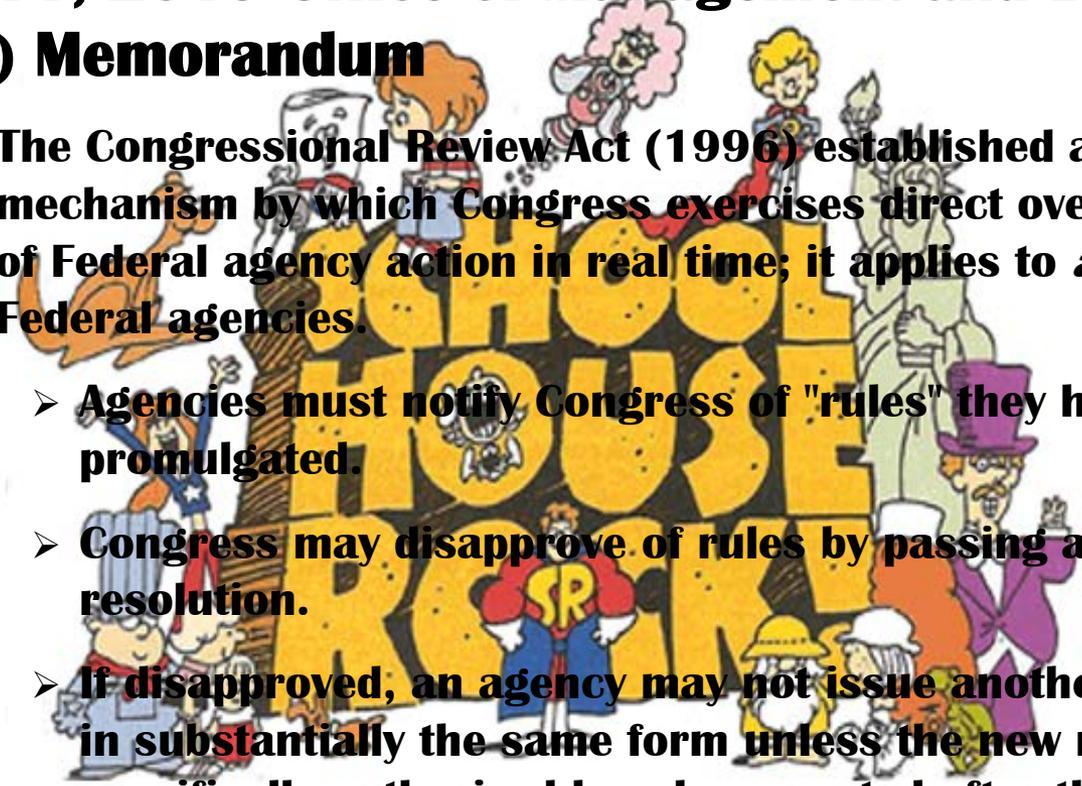
# REGULATIONS & POLICY



Hi! I'm Bill. Remember me?

# REGULATIONS & POLICY

## April 11, 2019 Office of Management and Budget (OMB) Memorandum

- 
- **The Congressional Review Act (1996) established a mechanism by which Congress exercises direct oversight of Federal agency action in real time; it applies to *all* Federal agencies.**
    - **Agencies must notify Congress of "rules" they have promulgated.**
    - **Congress may disapprove of rules by passing a joint resolution.**
    - **If disapproved, an agency may not issue another rule in substantially the same form unless the new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.**



# REGULATIONS & POLICY

## **April 11, 2019 Office of Management and Budget (OMB) Memorandum**

- **Entitled: *Guidance on Compliance with the Congressional Review Act (CRA).***
  - **Effective May 11, 2019**
- **Supersedes March 30, 1999 OMB Memorandum No. M-99-13 (*Guidance for Implementing the Congressional Review Act*).**



# REGULATIONS & POLICY

## April 11, 2019 Office of Management and Budget (OMB) Memorandum

- **Congressional Review Act contains an expansive definition of “rule.”**

**Includes “the whole or a part of an agency statement of general . . . applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency.”**

- **The Congressional Review Act therefore has far reaching implications.**



# REGULATIONS & POLICY

## **April 11, 2019 Office of Management and Budget (OMB) Memorandum**

- **The Congressional Review Act requires that the Office of Information and Regulatory Affairs (OIRA) designate whether a rule is “major,” which signals a rule's relative importance and economic impacts.**
  - **“Major” designation triggers a report by the Government Accountability Office (GAO) and a delayed effective date while Congress may consider whether it will disapprove the rule.**
  - **Rules may take effect no sooner than the later of 60 calendar days after CRA report submitted to Congress or the rule is published in the Federal Register.**



# REGULATIONS & POLICY

## **April 11, 2019 Office of Management and Budget (OMB) Memorandum**

- **Generally, “Major” designations focused on annual effect on economy of \$100 million or more.**
- **“Major” also includes rules and regulations likely to result in a “major increase in costs or prices for consumers, individual industries, governments, or geographic regions,” or there is a “significant adverse effects on competition, employment, investment, productivity, innovation” or US entities' ability to compete with foreign entities.”**
- **Memo directs agencies to follow specific approaches to determine rule's economic effect.**



# REGULATIONS & POLICY

## **April 11, 2019 Office of Management and Budget (OMB) Memorandum**

- **The Memo also asserts that the Congressional Review Act encompasses a wide range of regulatory actions, including:**
  - **Guidance Documents**
  - **General Statements of Policy**
  - **Interpretive Rules**



# REGULATIONS & POLICY

## **April 11, 2019 Office of Management and Budget (OMB) Memorandum**

### **➤ Scope of the Congressional Review Act would potentially include:**

- Proposed rulemaking and changes to applicable regulations.**
- BOEM and BSEE NTL's and related notifications to industry.**
- ONRR "Dear Reporter."**
- BSEE Safety Alerts.**
- BSEE Safety Bulletins.**



# REGULATIONS & POLICY

## Notice To Lessees

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NTL Number	Title	Status	Effective Date
NTL 2019-G06	NTL 2019-G06 - Inspection and Reporting for Hurricane Barry	Active	07/29/2019
NTL 2019-N04	NTL 2019-N04 - Calculating Maximum Anticipated Surface Pressure and Expected Surface Pressure for the Completion Case and Estimated Shut-in Tubing Pressure Prior to Production	Active	05/10/2019
NTL 2019-G02	NTL 2019-G02 - Guidance for Information Submissions Regarding Proposed High Pressure and/or High Temperature (HPHT) Well Design, Completion, and Intervention Operations	Active	05/10/2019
NTL 2019-G03	NTL 2019-G03 - Guidance for Information Submissions Regarding Site Specific and Non-Site Specific HPHT Equipment Design Verification Analysis and Design Validation Testing	Active	05/10/2019
NTL 2019-G04	NTL 2019-G04 - Requesting Approval to Consider External Hydrostatic Pressure Effects When Calculating Internal Pressure Containment Capability for Pressure Containing and Pressure Controlling Subsea Equipment	Active	05/09/2019
NTL 2019-G05	NTL 2019-G05 - Site Clearance and Verification for Decommissioned Wells, Platforms, and Other Facilities	Active	05/09/2019
NTL 2019-G01	NTL 2019-G01 - Suspension of Production/Operations Overview	Active	05/07/2019
NTL 2019-N01	NTL 2019-N01 - Electronic Submittal System for Deepwater Operations Plans	Active	05/03/2019
NTL 2019-N02	NTL 2019-N02 - Electronic Submittal of Requests, Reports, and Notifications	Active	05/03/2019
NTL 2019-N03	NTL 2019-N03 - Revised OCSLA Civil Penalty Assessment Matrix	Active	03/25/2019
NTL 2019-P01	NTL 2019-P01 - Hydrogen Sulfide March 20 2019	Active	03/20/2019



# REGULATIONS & POLICY

## April 11, 2019 Office of Management and Budget (OMB) Memorandum

- **BSEE issued 8 NTL'S between OMB memorandum dated April 11, 2019 and its effective date of May 11, 2019:**

<u>NTL No.:</u>	<u>Effective Date:</u>
NTL 2019-N02	5/3/19
NTL 2019-N01	5/3/19
NTL 2019-G01	5/7/19
NTL 2019-G05	5/9/19
NTL 2019-G04	5/9/19
NTL 2019-G03	5/10/19
NTL 2019-G02	5/10/19
NTL 2019-N04	5/10/19

- **Coincidence?**



# REGULATIONS & POLICY

## **April 11, 2019 Office of Management and Budget (OMB) Memorandum**

- **POTENTIAL IMPACT: Blowout Preventer Systems and Well Control Rule and new Oil and Gas Production Safety Systems Rule – effective July 15, 2019.**
  - **Discussions with BSEE; requested FAQ to help understand changes; but will have to go through OMB first.**
  - **Cannot produce NTL's/guidance documents until agency first runs by OMB.**



# REGULATIONS & POLICY

## **BSEE NTL No. 2019-G06 – *Inspection and Reporting for Hurricane Barry* – Effective July 29, 2019**

- **Attached map delineating area required to inspect/report.**
- **Timeline for completion of requisite inspections and subsequent repairs.**

## **BSEE NTL No. 2019-N03 – *Revised OCSLA Civil Penalty Assessment Matrix* – Effective March 25, 2019 – replaces NTL No. 2018-N01**

- **Adjusts maximum civil penalty amount at 30 CFR 250.1403.**
- **Increased to \$44,675/day/violation for penalties assessed on and after March 25, 2019, even if the assessed violation(s) predates March 25, 2019.**



# REGULATIONS & POLICY

## OCSLA Civil Penalty Assessment Matrix March 25, 2019

### GENERALIZED MATRIX FOR OCSLA CIVIL PENALTY ASSESSMENTS IN \$/DAY/VIOLATION

Enforcement Code	Category A	Category B	Category C
W	\$5,600 – 44,675 (\$16,700)*	\$11,100– 44,675 (\$22,300)*	\$22,300 – 44,675 (\$27,900)*
C	\$11,100– 44,675 (\$22,300)*	\$16,700– 44,675 (\$27,900)*	\$33,500 – 44,675 (\$39,000)*
S	\$16,700– 44,675 (\$27,900)*	\$22,300– 44,675 (\$33,500)*	\$39,000– 44,675 (\$41,300)*

Note: W = Warning, C = Component Shut-in, and S = Facility Shut-in;  
\* = Starting Point for Assessment

<u>Category A</u>	<u>Category B</u>	<u>Category C</u>
<p>Threat of injury to humans. Threat of harm or damage to the marine or coastal environment, including mammals, fish, and other aquatic life (threat may or may not involve endangered/threatened species). Threat of pollution. Threat of damage to any mineral deposit or property.</p>	<p>Injury to humans that results in 1-3 days away from work or 1-3 days on restricted work or job transfer. Minor harm or damage to the marine or coastal environment, including mammals, fish, and other aquatic life (harm to aquatic life did not involve an endangered/threatened species). Pollution caused by liquid hydrocarbon spillage of up to 50 barrels (bbls). Minor damage to any mineral deposit. Minor property damage equal to or less than \$25,000. Additional incidents required to be reported under 30 CFR 250.188, except (a)(6), (b)(1), and (b) (4).</p>	<p>Loss of human life. Injury to humans that results in more than 3 days away from work or more than 3 days on restricted work or job transfer. Serious harm or damage to the marine or coastal environment, including mammals, fish, and other aquatic life (harm to aquatic life involved numerous individuals or involved one or more members of an endangered/threatened species). Pollution caused by liquid hydrocarbon spillage of more than 50 barrels (bbls). Serious damage to any mineral deposit. Serious property damage greater than \$25,000.</p>



# REGULATIONS & POLICY

**BSEE NTL No. 2019-G05 – *Site Clearance and Verification for Decommissioned Wells, Platforms, and Other Facilities* – Effective May 9, 2019 – supersedes NTL No. 98-26 and updates the guidance on this topic.**

➤ **Regulations affected/cited/discussed:**

- **30 CFR 250.1703(a)**
- **30 CFR 250.1703(e), (f)**
- **30 CFR 250.1740**
- **30 CFR 250.1741**
- **30 CFR 250.1741(a)**
- **30 CFR 250.1741(b)**
- **30 CFR 250.1741(c)**
- **30 CFR 250.1741(d)**
- **30 CFR 250.1741(e) and Endangered Species Act Compliance Conditions**
- **30 CFR 250.1741(f)**
- **30 CFR 250.1741(g)**
- **30 CFR 250.1742(a)**
- **30 CFR 250.1742(c)**
- **30 CFR 250.1743(a)(5), (b)(6)**
- **30 CFR 250.1743(a)(6), (b)(7)**



# REGULATIONS & POLICY

**BSEE NTL No. 2019-G01 – *Suspension of Production/Operations Overview* – Effective May 7, 2019 – supersedes NTL No. 2000-G17 and No. 2011-N10**

- **Provides guidance/clarification re: 30 CFR 250.168-177 pertaining to granting and directing SOP/SOO.**
  - **Must receive complete suspension request, including the service fee before the date the lease would otherwise.**
    - **If received after such expiration date, BSEE does not have authority to grant your suspension request.**
  - **SOO may be submitted close to lease expiration date when the basis for your request is that you are prevented from performing scheduled lease-holding operations due to unforeseen circumstances beyond your control.**



# REGULATIONS & POLICY

## **BSEE NTL No. 2019-G01 – *Suspension of Production/ Operations Overview* – Effective May 7,**

### ➤ **Commitment to Production (CTP)**

- **Based on definitive decision by the operator to bring the discovered hydrocarbons (proven by well penetration on the subject lease) on production.**
- **Spending \$ alone insufficient; expected to complete exploration and delineation drilling as a prerequisite for a credible CTP, but such drilling alone is not sufficient—also demonstrate have enough technical information, drilling results, etc., to determine that project is an economic venture.**
- **If your CTP relies upon negotiating for use of another entity's production facility, the parties must have committed to such use of the facility (through executed PHA, etc.) before the date the lease would otherwise expire.**



# REGULATIONS & POLICY

**BSEE NTL No. 2018-G03 – *Idle Iron Decommissioning Guidance for Wells and Platforms* – Effective December 11, 2018 – supersedes NTL No. 2010-G05 (*Decommissioning Guidance for Wells and Platforms*)**

- **Generally, clean-up relating to:**
  - **Current state of operations.**
    - **Prior NTL didn't seem to necessarily include Deepwater concepts such as subsea trees, etc.**
  - **Current state of regulations.**
    - **Recent rule changes eliminated certain section previously cited.**
    - **Alternative-uses for offshore infrastructure.**

# REGULATIONS & POLICY

## **BSEE NTL No. 2018-G03 – *Idle Iron Decommissioning Guidance for Wells and Platforms* – Effective December 11, 2018 – supersedes NTL No. 2010-G05 (*Decommissioning Guidance for Wells and Platforms*)**

- **Future Use Determination for Idle Wells on Active Leases:**
  - BSEE may require you to perform downhole zonal isolation per 30 CFR 250.106(c), depending on length of time before wells can resume useful operations.
- **Future Use Determination for Idle Platforms or Other Facilities on Active Leases:**
  - Must submit (i) detailed discussion of facility's future utility and (ii) detailed schedule for operations to resume on the facility.
- **Idle Iron Reporting:**
  - BSEE retains discretion to be flexible on timing
  - You are expected to monitor your infrastructure and undertake P&A on your own initiative
  - Failure to comply with timelines outlined in this NTL (without a BSEE extension) may result in decommissioning Orders.



# REGULATIONS & POLICY

## **BSEE NTL No. 2018-G03 – *Idle Iron Decommissioning Guidance for Wells and Platforms* – Effective December 11, 2018 – supersedes NTL No. 2010-G05 (*Decommissioning Guidance for Wells and Platforms*)**

- **Reminds lessees of obligation to decommission terminated/expired/relinquished leases/ROWs within 1 year; failure to do so, absent BSEE extension, typically results in INC.**
- **BSEE expect operators to prioritize P&A on terminated/expired leases over Idle Iron, absent countervailing safety/environmental considerations.**
- **Reminder to submit decommissioning application, obtain approvals, and submit subsequent reports as required by regulations, including 30 CFR 250.1704(i) – certified summary of expenditures for P&A.**



# REGULATIONS & POLICY

## Office of Inspector General of DOI March 26, 2019 Closeout Memorandum

- **The DOI Inspector General reviewed BSEE idle infrastructure oversight and enforcement; “idle infrastructure is a term BSEE uses for wells, platforms, and pipelines on active leases that are unused or no longer viable.”**
- **BSEE not yet implemented decommissioning policies/procedures at national level –training needed.**
- **Will review in next 2 years to allow BSEE to develop/implement bureau-wide decommissioning policy.**



# REGULATIONS & POLICY

## BOEM Housekeeping Matters

- **BOEM OCS Operation Forms –**
  - **BOEM Leasing and Adjudication Forms 0150, 0151, and 0152 have an expiration date of 6/30/2019 and are currently under review for minor edits.**
  - **During the approval process, the Office of Manage and Budget extends the expiration date on the old forms for 30-day periods until the review is complete. Submitters can continue to use the expired forms until new forms are available." *BOEM Weekly Activity Report dated August 8, 2019.***



# REGULATIONS & POLICY

## BOEM Housekeeping Matters

- **BOEM Outage of Fees for Services due to Fiscal Year-end Closeout – *BOEM Weekly Activity Report dated August 8, 2019***
  - **Refund Request Forms will be disabled from 17:00 EST on Friday, September 13, 2019 until 09:00 EST on Tuesday, October 1, 2019.**
  - **Pay.Gov Forms will be disabled from 17:00 EST on Friday, September 20, 2019 until 09:00 EST on Tuesday, October 1, 2019.**
  - **During the outage, you will not be able to pay the required fees for services associated with filings of Assignments of Record Title, Assignments of Operating Rights, Designations of Operator, filings for Record Purposes (Required and Non-Required), Applications, E-Well, Online Ordering System (certified copy work) and Public Information).**
  - **September 20, 2019 is the final day BOEM will accept payments for such filings; plan accordingly, as filings will not be accepted and certified copies will not be released without proof of payment.**
- **PLAN ACCORDINGLY**



# REGULATIONS & POLICY

## **The Saga of ONRR's Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform Final Rule**

- **July 1, 2016 – Final Rule published; effective January 1, 2017.**
- **September 13, 2016 ONRR Dear Reporter Letter – Outlines new Rule for oil and gas valuation and reporting changes for production beginning January 1, 2017.**
- **Several industry groups challenged the 2016 Rule by filing suit in D.C. and Wyoming on December 29, 2016 alleging it would create widespread uncertainty and render compliance impossible.**



# REGULATIONS & POLICY

## **The Saga of ONRR's Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform Final Rule**

- **February 27, 2017, ONRR published Postponement Notice.**
- **In response, California and New Mexico filed suit alleging ONRR's action violated the APA.**
- **April 4, 2017 – ONRR Proposed Repeal notice published – claimed repeal consistent with Executive Order 13783 (*Promoting Energy Independence and Economic Growth* issued March 28, 2017).**
- **August 7, 2017 – 82 FR 36934 – ONRR published Final Repeal of 2016 Valuation Rule and simultaneously reinstated the valuation regulations in effect before January 1, 2017**
- **Repeal/reinstatement effective September 6, 2017.**



# REGULATIONS & POLICY

## **The Saga of ONRR's Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform Final Rule**

- **March 29, 2019 – Judge granted MSJ for violation of APA and vacated ONRR's repeal of new Rule.**
- **June 13, 2019 – ONRR Dear Reporter Letter – by vacating repeal of new Rule, the Court reinstated such rule effective January 1, 2017 – “Accordingly, all federal oil and gas lessees and all federal and Indian coal lessees, should recalculate royalties under the 2016 Rule for oil, gas, and coal production from January 1, 2017, forward.”**
  - **Lessees should resubmit amended royalty reports, pay (or take credit) for under/over paid royalties, and prospectively report and pay under provisions outlined in 2016 Rule.**
  - **ONRR expects corrected reporting NLT January 1, 2020.**
- **June 13, 2019 – API filed suit in Wyoming for review of the final agency action repealing the 2016 Valuation Rule.**
- **WHO KNOWS WHERE WE GO FROM HERE?!**

# REGULATIONS & POLICY

## Any Questions ?





# **2019 OCS ADVISORY BOARD SUMMER SEMINAR PROGRAM**

## **Update on Recent Court Decisions, IBLA Decisions, and Other Regulatory and Policy Issues Impacting the OCS**

**Paul J. Goodwine**

**Looper Goodwine P.C.**

**August 20, 2019**