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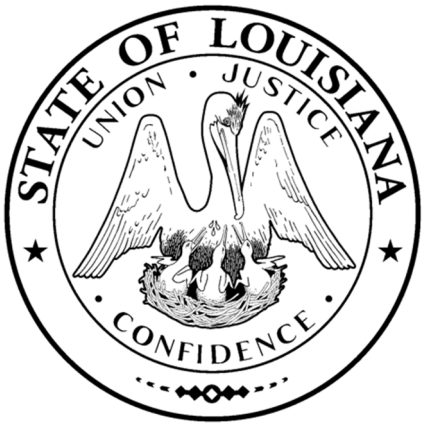

LOUISIANA

Keith B. Hall[†]

I. CASES

A. *Use of Citizen Suits to Pursue Legacy Litigation*[1]

In *Guilbeau v. BEPCO, L.P.*,[2] a landowner filed suit seeking remediation of contamination arising from oil and gas activities prior

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1. In Marin v. Exxon Mobil Corp., 48 So.3d 234, 238 n.1 (La. 2010), the Louisiana Supreme Court stated: "Legacy litigation" refers to lawsuits in which "Legacy litigation" refers to hundreds of cases filed by landowners seeking damages from oil and gas exploration companies for alleged environmental damage in the wake of this Court's decision in Corbello v. Iowa Production, 850 So.2d 686 (La. 2003). These types of actions are known as "legacy litigation" because they often arise from operations conducted many decades ago, leaving an unwanted "legacy" in the form of actual or alleged contamination. (citing Loulan Pitre, Jr., *"Legacy Litigation" and Act 312 of 2006*, 20 TUL. ENVT. L.J. 347, 34 (Summer 2007)).

2. Guilbeau v. BEPCO, L.P., 2019 WL 1230944 (W.D. La.).

to his purchase of the property. The landowner previously had filed a suit seeking a clean-up based on the defendants' obligations under the Louisiana Mineral Code. That earlier suit was dismissed based on the subsequent purchaser doctrine.[3] The subsequent purchaser doctrine states that private claims for damages to property belong to the person who owned the property at the time of the damages and absent that person's assignment of his claims to a subsequent purchaser of the property, the subsequent purchaser does not have a claim against the person who caused the damages.[4]

In the current suit, the landowner seeks injunctive relief—in particular, an order requiring a remediation—in a citizen suit brought pursuant to Louisiana Revised Statutes 30:14 and 30:16. Revised Statute 30:14 states in part:

> Whenever it appears that a person is violating or is threatening to violate a law of this state with respect to the conservation of oil or gas, or both, or a provision of this Chapter, or a rule, regulation, or order made thereunder, the commissioner shall bring suit to restrain that person from continuing the violation or from carrying out the threat.
>
> ***
>
> In this suit, the commissioner may obtain injunctions, prohibitory and mandatory, including temporary restraining orders and preliminary injunctions, as the facts warrant ***

Louisiana Revised Statute 30:16 states:

> If the commissioner fails to bring suit within ten days to restrain a violation as provided in La. R.S. 30:14, any person in interest adversely affected by the violation who has notified the commissioner in writing

3. Guilbeau v. 2 Hess Corp., Inc., 854 F.3d 310, 314 (5th Cir. 2017).

4. Eagle Pipe & Supply, Inc. v. Amerada Hess Corp., 79 So.3d 246 (La. 2011) (the leading case on the subsequent purchaser doctrine). If the damage was apparent at the time of sale, the purchaser presumably negotiated for a lower sales price. *Eagle Pipe*, So. 3d at 275 ("it is assumed the apparent damage would result in a loss of value to the sale, the subsequent purchaser may have a claim in redhibition against the seller.").

> of the violation or threat thereof and has requested the commissioner to sue, may bring suit to prevent any or further violations, in the district court of any parish in which the commissioner could have brought suit. If the court holds that injunctive relief should be granted, the commissioner shall be made a party and shall be substituted for the person who brought the suit and the injunction shall be issued as if the commissioner had at all times been the complaining party.

The defendants filed motions to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), arguing that these citizen suit provisions are designed only to combat ongoing and threatened violations of the conservation laws, not to provide a remedy for past violations. Magistrate Judge Perez-Montes issued a report rejecting that argument and recommending that the court deny the motions to dismiss. In his report, he relied in part on the Louisiana First Circuit's decision in *Global Marketing Solutions, L.L.C. v. Blue Mill Farms, Inc.*[5] In addition, the Magistrate's report cited a footnote in the Louisiana Supreme Court's opinion in *Marin v. Exxon Mobil Corp.* In that footnote, the Court stated in dicta:

> We note that one of the reasons we granted this writ was to determine whether a subsequent purchaser has the right to sue for property damages that occurred before he purchased the property, particularly where the damage was not overt. However, we need not reach that determination in this case because, assuming the Breauxs had a right as a subsequent purchaser to sue in tort for property damage, that right has prescribed. Further, we note that regardless of who has standing to pursue claims for money damages, the current owner of property always has the right to seek a regulatory cleanup of a contaminated site. La. R.S. 30:6(F); La. R.S. 30:16.[6]

5. Global Marketing Solutions, L.L.C. v. Blue Mill Farms, Inc., 2018-0093 (La. App. 1 Cir. 11/6/2018), 2018 WL 5816971. That decision, by a divided First Circuit panel, denied the defendants' exception of no cause of action.

6. *Marin*, 48 So.3d at 256 n. 18.

Tureau v. BEPCO, L.P.[7] is almost identical to *Guilbeau*, which is discussed immediately above. In *Tureau*, a landowner filed suit seeking remediation of contamination arising from oil and gas activities prior to his purchase of the property. The landowner previously had filed a suit seeking a clean-up based on the defendants' obligations under the Louisiana Mineral Code. That earlier suit was dismissed based on the subsequent purchaser doctrine.[8] In the current action, the landowner seeks injunctive relief—an order requiring a remediation—in a citizen suit brought pursuant to Louisiana Revised Statutes 30:14 and 30:16. The defendants filed motions to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), arguing that these citizen suit provisions are designed only to combat ongoing and threatened violations of the conservation laws, not as a remedy for past violations. Magistrate Judge Perez-Montes issued a report rejecting that argument and recommending that the court deny the motions to dismiss.

B. *Lease Royalty Dispute*

1. Lease Basing Royalties on Market Value at the Well, While Making Lessee Responsible for Most Production Costs, was Ambiguous

In *AWT Be Good LLC v. Chesapeake, L.P.*,[9] AWT Be Good LLC granted an oil and gas lease, which provided that except when natural gas was sold at the well, the royalty on gas would be based on the market value at the well. A few months later, the lease was assigned to Chesapeake Louisiana. In 2010, the parties amended the lease. The amendment provided that the lessee would be responsible for many post-production costs but not "long-haul transportation charges to the point of sale of the royalty gas." Later, AWT brought suit, asserting that Chesapeake was improperly charging AWT with a

7. Tureau v. BEPCO, L.P., 2019 WL 1230976 (W.D. La.)
8. Tureau v. 2 H, Inc., 2016 WL 4500755 (W.D. La. 2016).
9. AWT Be Good LLC v. Chesapeake, L.P., 2019 WL 177946 (W.D. La. 2019).

portion of pipeline capacity charges when Chesapeake did not use the entire pipeline capacity that it reserved.

Both sides moved for summary judgment, but the court held that neither side was entitled to summary judgment. The court concluded that the lease was ambiguous for multiple reasons. For example, the lease did not make it clear what constituted "long-haul transportation charges." Further, the parties had amended the lease to make the lessee responsible for many types of post-production costs, but the parties had not amended the portion of the royalty clause that provided that the royalty on gas will be based on the market value at the well, even though "market value at the well" implies that the parties will each bear a share of post-production costs. Additionally, neither party has submitted summary judgment evidence sufficient to make it clear exactly how Chesapeake's contracts with the pipeline companies worked or how Chesapeake determined the amount of capacity charge that would be allocated to AWT.

2. Letters Informing Lessees of Change in Lessor and Requesting Reissuance of Past Royalty Checks were Not Sufficient to Constitute a Mineral Code article 137 Notice

Louisiana Oil & Gas Interests, LLC v. Shell Trading (U.S.) Co.[10] was a royalty dispute. Properties-General LLC owned the lessor's interest under an oil and gas lease held by Shell Trading and Gulfport Energy. Properties-General transferred its interest to Louisiana Oil & Gas Interests, LLC in late December 2013.

On January 17, 2014, Louisiana Oil & Gas sent a letter to Shell requesting that future royalty checks be made payable to it. Within a few days, Shell responded with an email requesting that Louisiana Oil & Gas provide Shell with a copy of a recorded document in which Properties-General transferred its interest to Louisiana Oil & Gas.

On February 21, 2014, Louisiana Oil & Gas recorded a copy of the document effecting the transfer into the conveyance records of Cameron Parish, but months went by without Louisiana Oil & Gas sending a copy of the document to Shell. Shell continued to issue royalty checks made out to Properties-General. According to

10. Louisiana Oil & Gas Interests, LLC v. Shell Trading (U.S.) Co., 2019 WL 1768296 (W.D. La.).

Louisiana Oil & Gas, it shared an owner with Properties-General, and for a while, Louisiana Oil & Gas's bank had allowed the company to deposit the checks, even though the checks were made out to a separate company. However, Louisiana Oil & Gas later changed banks, and the new bank would not let the company deposit the checks.

On April 21, 2015, Louisiana Oil & Gas faxed to Shell a certified copy of the document transferring the interest and showing that the document had been filed in the conveyance records.

On April 23, 2015, Louisiana Oil & Gas returned to Shell two checks that were made out to Properties-General. Louisiana Oil & Gas requested that the two checks be reissued to it. Each of the checks was dated prior to the April 21 fax.

On June 1, 2015, Shell reissued the two checks.

On September 1, 2015, Louisiana Oil & Gas sent a demand to Shell requesting payment of damages pursuant to Louisiana Mineral Code article 31:140.

Shell and Gulfport filed Rule 12(b)(6) motions to dismiss, and Magistrate Judge Kathleen Kay issued a report recommending that the motions be granted. She noted that under Mineral Code article 137, before a lessor asserts a claim for the underpayment, nonpayment, or late payment of royalties, the lessor must give the lessee written notice of such failure and wait thirty days. The remedy for which a lessor who brings suit and proves he was not properly paid depends on the lessee's response to the required written notice that the lessee has not properly paid royalties.

Here, the January 17, 2014 letter could not constitute a notice of failure to properly pay royalties because the letter addressed future royalties, not past royalties that had not been timely and properly paid. Further, the plaintiff's April 23, 2015 fax did not actually allege that royalties had not been properly and timely paid. The letter requested that the checks be reissued, but that request fell short of an assertion that the royalties had not been properly paid. Accordingly, Louisiana Oil & Gas never sent a Mineral Code article 137 demand before Shell paid the royalties with its June 1, 2015 check.

C. *Meaning of "minerals" in Instrument Creating Servitude—Servitude that Applied to "all forms of minerals" Applied to Clay*

In *Citrus Realty, LLC v. Parker*,[11] the defendants owned an undivided 10% in certain land in Plaquemines Parish. They sold their 10% ownership interest to Citrus but reserved a mineral servitude. The act of sale reserved the defendants' rights relating to "all forms of minerals, including oil gas" but provided that the defendants would have no surface use rights. However, they could "explore for minerals by offsite directional drilling or other means not involving the surface of the property." White Oak Realty later acquired ownership of the 90% interest in the land not owned by Citrus.

White Oak and Citrus later began to conduct clay mining operations on the land. The defendants asserted their right to a portion of the proceeds, pursuant to their servitude for 10% of all minerals. Citrus filed an action for a declaratory judgment that the defendants' servitude did not extend to the clay. White Oak later joined the suit as an additional plaintiff.

The plaintiffs argued that the language in the act of sale that barred the defendants from using the surface was intended to limit the servitude to minerals that can be produced by directional drilling. The district court granted summary judgment in favor of the plaintiffs, and the defendants appealed. The appellate court reversed, rejecting the argument that the restriction on surface use also had the effect of limiting the minerals to which the servitude applied. The appellate court reasoned that the reservation of a right to "all forms of minerals" applied to clay.

The appellate court also noted that certain additional justifications given by the trial court for its judgment in favor of the plaintiffs were simply erroneous. For example, the trial court had reasoned that because prescription of nonuse is only interrupted by operations conducted by the servitude owner or someone operating on the servitude owner's behalf, a servitude owner is not entitled to a share of production from someone else's operations. This is clearly wrong. As noted by the appellate court, the provision in the Mineral Code that prescription of nonuse is only interrupted by operations conducted by the servitude owner (or someone operating on his behalf)[12] has no bearing on the servitude owner's right to a share of production.

11. Citrus Realty, LLC v. Parker, 2018-516 (La. App. 4 Cir. 1/30/2019), 2019 WL 385194 (La. App. 4th Cir. 2019).

12. LA. STAT. ANN. § 31:42 (2000) ("Except as provided in Articles 44 through

Therefore, the appellate court reversed the summary judgment granted in favor of the plaintiffs and remanded the case to the district court.

D. *Louisiana Oil Well Lien Act Does Not Create Personal Obligation*

In *Quality Production Management, LLC v. ConocoPhillips Co.*,[13] Quality Production Management filed suit against ConocoPhillips and BHP Billiton Petroleum. Quality alleged that ConocoPhillips and BHP are the owners of certain wells off the coast of Vermilion Parish. At the request of Rooster Petroleum, the operator of record for the wells, Quality performed work and provided materials for which it was owed about $90,525.71, along with interest and reasonable attorneys fees, but Rooster went into bankruptcy. Quality asserted a privilege, pursuant to the Louisiana Oil Well Lien Act ("LOWLA")[14] and sought a money judgment against ConocoPhillips and BHP. Those defendants moved to dismiss the claims for a money judgment against them, asserting that there was no privity of contract between them and Quality, and that LOWLA does not create personal liability. Rather, LOWLA provides in rem liability only against the wells and leases on which a claimant performs work or provides material or equipment. Magistrate Judge Whitehurst agreed and issued a report recommending dismissal of the portion of Quality's claim that seeks to impose personal liability against ConocoPhillips and BHP.

E. *Prescription of Nonuse: Creation of Unit with Shut-In Well Capable of Production in Paying Quantities Interrupts Prescription of Nonuse for Mineral Royalty Even Though Production Test was a Different Type Test Than Necessary to Satisfy Regulations*

52, use of a mineral servitude must be by the owner of the servitude, his representative or employee, or some other person acting on his behalf.") Title 31 of the Louisiana Revised Statutes is known as the "Louisiana Mineral Code." The provisions of the Mineral Code may be cited as "articles" of the Code or as "sections" of Title 31 of the Revised Statutes. LA. STAT. ANN. § 31:1 (2000) ("Thus Article 30 of the Louisiana Mineral Code may also be referred to or cited as R.S. 31:30.").

13. Quality Production Management, LLC v. ConocoPhillips Co., 2019 WL 516125 (W.D. La.).

14. LA. STAT. ANN. § 9:4863 (2007).

George M. Gilmer, Jr. granted a mineral royalty to Regal Energy, L.L.C. covering land in DeSoto Parish on April 1, 2018.[15] The instrument granting the royalty provided that the royalty would be subject to a three-year prescriptive period, but that the presence of a shut-in well would "perpetuate the term" of the royalty.

XTO Energy, Inc. drilled a well (the "Brown Well") on the property and (through an oilfield service company) performed an open-flow surface production test in late January 2009, flaring natural gas during the test. The test showed that the Brown Well was capable of producing gas in paying quantities. The Brown Well became the unit well but was shut-in because of the lack of a pipeline. On April 30, 2011, Chesapeake Operating, Inc. established production from an alternate unit well.

Gilmer filed suit, seeking a declaratory judgment that the mineral royalty had terminated by prescription of nonuse[16] before that production began. Gilmer contended that production from the Brown Well did not interrupt prescription because the hydrocarbons produced during the test of the well were flared, not saved and used. He also noted that production from Chesapeake's alternate well did not start until more than three years after the royalty was created.

Relevant Mineral Code provisions include articles 87, 88, 90, and 91. These provide:

> **Min. Code art. 87. Production as interruption of prescription; commencement of prescription anew**
>
> Prescription of nonuse running against a mineral royalty is interrupted by the production of any mineral covered by the act creating the royalty. Prescription is interrupted on the date on which actual production begins and commences anew from the date of cessation of actual production.

15. Gilmer v. Principle Energy, L.L.C., 52,281 (La. App. 2 Cir. 9/26/2018), 256 So. 3d 1139.

16. LA. CIV. CODE ANN. art. 3448 (2007) (stating that "Prescription of nonuse is a mode of extinction of a real right other than ownership as a result of failure to exercise the right for a period of time."); LA. STAT. ANN. § 31:27 (2000) (listing "prescription resulting from nonuse for ten years" as one mode of extinction for mineral servitudes).

> **Min. Code art. 88. Saved production sufficient to interrupt prescription**
>
> To interrupt prescription it is not necessary that minerals be produced in paying quantities but only that they actually be produced and saved.
>
> **Min. Code art. 90. Tested shut-in well as interruption of prescription**
> When there exists on a tract of land burdened by a mineral royalty, or on a conventional or compulsory unit that includes all or part thereof, a shut-in well proved through testing by surface production to be capable of producing minerals in paying quantities, prescription is interrupted on the date production is obtained by such testing. If only a part of the tract burdened by the royalty is included in a unit and the unit well is on land other than that burdened by the royalty, the interruption of prescription extends only to that portion of the tract burdened by the royalty included in the unit. Prescription commences anew from the date on which the well is shut in after such testing.
>
> **Min. Code art. 91. Unitization with tested shut-in well; effect as interruption of prescription**
>
> If the land or part thereof, burdened by a mineral royalty is included in a conventional or compulsory unit on which there is a well shut in prior to the creation of the unit, located on other land within the unit, and capable of producing in paying quantities as required by Article 90, prescription is interrupted on and commences anew from the effective date of the order or act creating the unit.

The trial court held that, because production was not saved during the testing of the Brown Well, prescription was not interrupted pursuant to article 90. However, the court held that prescription was

interrupted, pursuant to article 91, when the Brown Well was named the unit well. The district court rejected Gilmer's argument that because XTO had not conducted a type of production test required under Office of Conservation regulations,[17] the production test had not counted for purposes of Mineral Code article 91.

The Louisiana Second Circuit affirmed the district court's summary judgment dismissing Gilmer's suit. The appellate court basically followed the reasoning of the trial, stating its conclusion that because hydrocarbons were not saved during the production test, the test did not interrupt prescription pursuant to Mineral Code articles 87 or 90.[18] On the other hand, pursuant to article 91, "prescription was interrupted on, and commenced anew, from the effective date of the order . . . creating the unit."[19] Like the trial court, the appellate court rejected the plaintiff's contention that the testing of the well did not count for purposes of Mineral Code articles 90 and 91 because of the operator's failure to perform the type of test required by certain regulations.

F. *Mineral Code article 206 Obligation Applies to Person Who Holds Lease at Time It Terminates, Rather Than to All Persons Who Ever Held Lease*

In the early 1970s, the Pardee Company sold several tracts of land to the predecessor of Weyerhaeuser Co.[20] In the sale, Pardee reserved a mineral servitude over each tract. Pardee granted a mineral lease covering portions of the land in 2001. The original lessee assigned the lease to EP Energy E&P Co., which established unit production for units that included portions of the land. Weyerhaeuser filed suit asserting that the servitude at issue had terminated by prescription of nonuse before EP established production. Weyerhaeuser demanded that several parties, including EP, execute a recordable act evidencing termination of their mineral rights. EP declined to do so. Weyerhaeuser filed suit seeking a declaration that

17. One of the regulations governing well testing is LA. ADMIN. CODE tit. 43, pt. XIX, § 119 (West, Westlaw through rules pub. in La. Reg. Vol. 45, No. 09, Sept. 20, 2019).

18. Mineral Code article 90 (LA. STAT. ANN. § 31:90) does not explicitly require that production be saved in order for testing to interrupt prescription.

19. Gilmer v. Principle Energy, 256 So. 3d 1139, 1145 (La. App. 2018).

20. Weyerhaeuser Co. v. Pardee Minerals, LLC, 2018 WL 5624312 (W.D. La.).

the mineral rights had terminated. Weyerhaeuser also sought attorney fees, pursuant to Mineral Code article 206, because of the defendants' failure to acknowledge the termination of their mineral rights. The district court rejected Weyerhaeuser's claim against EP for attorney fees. The court interpreted Mineral Code article 206 as imposing a duty only on the person who owns a mineral right at the time the right terminates, not on all persons who ever owned the mineral interest.

G. *Pooling Issues--Unleased Owner Not Responsible for Post-Production Costs*

In *Johnson v. Chesapeake Louisiana LP*,[21] parties disputed whether the operator of a compulsory drilling unit can charge an unleased owner with a proportionate share of post-production costs. The United States District Court for the Western District of Louisiana held that such an operator cannot.

Louisiana Revised Statute Section 30:10(A)(2) states, "In the event pooling is required, the cost of development and operation of the pooled unit chargeable to the owners therein shall be determined and recovered as provided herein." Section 30:10(A)(3) provides that owners of unleased mineral rights in a tract in a unit are liable, out of production, for their "tract's allocated share of the actual reasonable expenditures" incurred by the unit operator in drilling the well and producing oil or gas. The statute does not expressly address post-production costs that the operator may incur in handling and transporting oil or gas prior to selling it.

Nevertheless, unit operators often incur such post-production costs in handling and arranging the sale of hydrocarbons attributable to unleased interests, particularly if a unit well produces natural gas. This occurs because many owners of unleased interests do not make their own arrangements to sell the portion of gas attributable to the tracts in which they own interests. In such circumstances, the operator has authority to sell the gas attributable to the unleased interests, subject to an obligation to account to the owners of the interests. Typically, operators choose to exercise that authority because the alternative of letting an unleased owner's share of gas accumulate is not practical.

21. Johnson v. Chesapeake Louisiana LP, 2019 WL 1301985 (W.D. La.).

Post-production costs that operators commonly incur include expenses for treating and compressing gas and transporting it to the place of sale. This leads to the question disputed in *Johnson*. Namely, if the unit operator sells natural gas attributable to an unleased interest, is the owner of that interest responsible for a proportionate share of the post-production costs reasonably incurred by the operator in handling the gas? In *Johnson*, the operator (Chesapeake) argued that it was entitled to charge the unleased owner with a proportionate share of these costs. Otherwise, the unleased owners would be unjustly enriched at Chesapeake's expense.

The court rejected that argument, noting that 30:10(A)(3) states:

> If there is included in any unit created by the commissioner of conservation one or more unleased interests for which the party or parties entitled to market production therefrom have not made arrangements to separately dispose of the share of such production attributable to such tract, and the unit operator proceeds with the sale of unit production, then the unit operator shall pay to such party or parties such tract's pro rata share of the proceeds of the sale of production within one hundred eighty days of such sale.

Chesapeake argued that the only purpose of 30:10(A)(3) is to set a deadline for payment, not to govern liability for post-production costs. The court held otherwise. Section 30:10 does not define "pro rata share," but the court concluded that it means a pro rata portion of gross proceeds from which the operator may subtract only the costs that Section 30:10 expressly authorizes the operator to recover. The district court granted summary judgment in favor of the unleased owners, holding that Chesapeake may not charge them with a share of post-production costs.

II. LEGISLATION

A. *Co-ownership and Authority to Operate – La. Acts 2019, No. 350*

When more than one person owns a working interest in the same land, a question sometimes arises regarding what level of consent is needed to authorize oil and gas operations.[22] In other words, do operations require the consent of all persons who own a working interest?

The answer to this question is: "It depends." The existence of multiple working interest owners can arise in various ways. The simplest is when land is co-owned and no mineral servitudes or mineral leases exist. The Mineral Code does not address this situation, but Civil Code article 801 states: "The use and management of the thing held in indivision is determined by agreement of all the co-owners." This has been interpreted as meaning that the consent of all co-owners of the land generally is required in order to authorize operations[23] with a narrow exception being that Civil Code article 800 allows a co-owner to "take necessary steps for the preservation of the thing held in indivision" without the concurrence of other co-owners. Under Mineral Code article 177, a similar rule and similar exception apply if the land is subject to a mineral lease and the lessee's interest is co-owned.

However, different rules apply in three other situations—(1) if the land is subject to a mineral servitude that is co-owned, (2) the land is co-owned and one or more, but fewer than all, of the co-owners grant a mineral servitude, or (3) the land is co-owned or it is subject to a mineral servitude that is co-owned, and one or more (but fewer than all) of the co-owners grant a mineral lease. In these three situations, the original version of the Mineral Code required the consent of all working interest owners, but that requirement has been loosened.[24]

The first "loosening" occurred in 1986. Acts 1986, No. 1047 amended Mineral Code article 164 to provide that if a co-owner of land creates a mineral servitude that burdened his interest, the servitude owner can operate, provided that such owner acquires the consent of co-owners owning at least an undivided 90% interest in the land (the fractional interest of the co-owner who created the servitude

22. Clark v. Tensas Delta Land Co., 136 So. 1, 2 (La. 1931) (owner of mineral servitude for one-half of minerals erroneously contended that it needed consent of landowner); *cf.* Huckabay v. Tex. Co., 78 So. 2d 829 (La. 1955).

23. *Cf.* Gulf Refining Co. v. Carroll, 82 So. 277, 278 (La. 1919); Sun Oil Co. v. State Mineral Bd., 92 So. 2d 583, 586 (La. 1956); LA. STAT. ANN. § 31:177 (2000).

24. LA. STAT. ANN. §§ 31:164, 31:166, 31:175 (2000).

should count toward the total amount of consenting interests). The same legislation amended Mineral Code article 166 to provide that if a co-owner of land creates a mineral lease covering his interest, the lessee may operate with the consent of co-owners owning at least an undivided 90% interest in the land. Finally, the 1986 legislation amended Mineral Code article 175 to provide that if land is subject to a mineral servitude and the mineral servitude itself is co-owned, a co-owner can conduct operations if co-owners owning at least an undivided 90% interest consent.

The requirements were loosened further two years later, when Acts 1988, No. 647 amended Mineral Code articles 164, 166, and 175 to lower the threshold in those three situations from 90% to 80%.

Acts 2019, No. 350 amends Mineral Code articles 164, 166, and 175 to lower the threshold to 75%.

B. *Use of Oilfield Site Restoration Fund for Responding to Emergencies*

Acts 2019, No. 193 amended Louisiana Revised Statute 30:86 to authorize use of money from the Oilfield Site Restoration Fund to respond to emergencies declared by the Commissioner of Conservation pursuant to Revised Statute 30:6.1. Act No. 193 also amends Revised Statue 30:93.1 to provide that if money from the Fund is used to respond to an emergency, the Commissioner must seek recovery of those funds from any party that has operated or held a working interest in the site where the emergency occurs.

C.*State Leases—Including a Provision for a Security Interest*

Acts 2019, No. 403 provides that the State Mineral and Energy Board may include a clause that grants a security interest in minerals produced pursuant to the lease (or lands pooled therewith and attributable to the leased premises) in state mineral leases issued after July 31, 2019 to secure the lessee's obligation to pay lease royalties or other sums due under the lease.

The motivation for this amendment relates to the fact that Louisiana law classifies an oil and gas as a type of lease[25]—in contrast to the laws of some other states, which do not classify oil and gas leases as true leases (as the term "lease" is used in landlord tenant

25. LA. CIV. CODE ANN. art. 2671 (2019).

law).[26] Therefore, a mineral lessor's royalty constitutes rent under Louisiana law.[27] Because the lessor's royalty constitutes rent, the Mineral Code article 146 "lessor's lien," which is designed to secure the payment of the royalty, may be rendered unenforceable by 11 U.S.C. § 545 when a lessee is in bankruptcy.[28] Certain state officials were concerned that Louisiana needed to find a way to secure payment of the royalties to which it is entitled under oil and gas leases granted by the State.[29]

26. Natural Gas Pipeline Co. v. Pool, 124 S.W.3d 188, 192 (Tex. 2003) ("In Texas it has long been recognized that an oil and gas lease is not a 'lease' in the traditional sense of a lease of the surface of real property."); *In re* Topco, 894 F.2d 727, 739 n.17 (5th Cir. 1990) ("The term 'lease,' when used in an oil and gas context, is a misnomer. The estate created by the oil and gas lease is not the same as those interests created under a 'lease' governed by the law of landlord and tenant"); PATRICK H. MARTIN & BRUCE M. KRAMER, WILLIAMS AND MEYERS OIL AND GAS LAW § 202.1 ("The very name 'lease' is unfortunate inasmuch as it tends to give the impression to the uninformed that the relationship arising between the parties to an oil and gas lease is the same as that of landlord and tenant under as [sic] common law lease of land, whereas except in Louisiana, the dissimilarities are more important than the similarities.").

27. LA. STAT. ANN. § 31:123 (2000).

28. *See e.g.*, *In re* WRT Energy Corp., 169 F.3d 306 (5th Cir. 1999).

29. The author served on a committee appointed by the Louisiana Law Institute, at the request of the Louisiana legislature, to address this issue.