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I. Introduction

The 2020 installment of the Louisiana Oil and Gas Update addressed numerous challenges posed by the COVID-19 Pandemic. The 2021 installment's big story, however, is the new administration's focus on the environment and the federal leasing moratorium.

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II. Legislative and Regulatory Updates

A. State Legislative Developments

1. House Concurrent Resolution 71 (HCR 71): Urging and Requesting President Biden to Immediately End the Pause on Offshore Oil and Natural Gas Leasing in the Gulf of Mexico

HCR 71, enrolled during the 2021 Regular Session, requested that President Biden immediately end the pause on offshore oil and natural gas leasing and allow for the continued exploration, development, and production of these resources in the Gulf of Mexico.

The Resolution notes that the oil and natural gas industry provides thousands of high-paying jobs for Louisianans, generates millions of dollars in revenue for state and local programs, and decreases America's dependence on foreign oil. Further, if President Biden's order is not reversed, the result will be diminished investment and activity in the Gulf of Mexico, loss of revenues across many industries, job losses, increased greenhouse gas emissions (due to the increase in production and import of foreign resources), etc. For all the foregoing reasons, the Louisiana Legislature submitted this request to President Biden.

H.R. Con. Res. 71, 2021 Reg. Sess. (La. 2021).

2. Senate Bill 59 (SB 59): Providing a Risk Charge Against Nonparticipating Mineral Owners in Drilling Units

SB 59, introduced by Senator Hensgens on the recommendation of the Louisiana State Law Institute, proposed significant changes to R.S. 30:10(A)(2) which provides for risk charges to nonparticipating mineral owners in drilling units.

The first significant change made to this section can be found in R.S. 30:10(A)(2)(b)(i) where the drilling owner is granted the right to collect, from nonparticipating owners, in addition to other available legal remedies to enforce collection of drilling expenses, the right to own and recover out of net production proceeds the nonparticipating owner's share of reasonable expenditures. Existing law gives drilling owners the right to recover out of *production* whereas the proposed law allows recovery out of *net production proceeds*. The proposed bill then defines net production proceeds. Also in this section, the bill provides for a risk charge of 200% of such tract's allocated share of the cost of drilling, testing, and completing on a unit well, substitute unit well, or cross-unit well that will serve as the unit well or substitute well for the unit. It also provides a risk charge of 100% of such tract's allocated share of the cost of drilling, testing, and completing on an

alternate unit well or cross-unit well that will serve as an alternate unit well for the unit. This differs from the present law in that both risk charges are currently exclusive of amounts the drilling owner remits to the nonparticipating owner for the benefit of the nonparticipating owner's royalty and overriding royalty owner.

The following proposed change addresses how nonparticipating owners can receive payments for their royalty and overriding royalty owners. For the nonparticipating owner to receive payments due to royalty owners, the nonparticipating owner must furnish a true and complete copy of the mineral lease or agreement creating the lessor royalty and a sworn statement of ownership by the nonparticipating owner as to each tract embraced within the unit in which the nonparticipating owner has an interest and the amounts of the lessor royalty and overriding royalty burdens for which the nonparticipating owner is entitled to receive a portion of the proceeds from the sale or other disposition of the production[1]. Nonparticipating owners may also provide drilling owners copies of any title opinions on which the statement of ownership is based. In addition to this recovery on behalf of royalty owners, the nonparticipating owner shall receive, from the drilling owner for the benefit of the overriding royalty owner, a portion of the proceeds from the sale or other disposition of production, less severance or production taxes, the lessor of (1) the nonparticipating owner's total percentage of overriding royalty burdens associated with the existing lease or leases or (2) the difference between the weighted average percentage of the total actual lessor royalty and overriding royalty burdens of the drilling owner's leasehold within the unit and the weighted average percentage of the total actual lessor royalty and overriding royalty burdens on the nonparticipating owner's leasehold within the unit.

The bill also proposed the addition of sections R.S. 30:10(A)(2)(hh)[2], (ii)[3], and (jj)[4].

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1. These requirements are set out as R.S. 30:10(A)(2)(gg).

2. The nonparticipating owner will indemnify the drilling owner for any claims for incorrect payments when incorrect payments were made based on information provided under Subitem (gg).

3. Changes in ownership are not binding on the drilling owner until the drilling owner is furnished copies of documents evidencing such change in ownership.

4. If drilling owner secures a title opinion covering a tract of land burdened by a mineral lease, or other agreement that creates any lessor royalty or overriding royalty for which a nonparticipating owner is entitled to receive from the drilling owner, the drilling owner is entitled to recover the actual reasonable costs of obtaining the title opinion. This

Next, the bill proposes including subsequent well operations to R.S. 30:10, including a 100% risk charge of the tract's allocated share of the actual reasonable expenditures for any subsequent unit operation, regardless of whether the wellbore on which such operations is conducted is a unit well, alternate unit well, substitute unit well, or cross-unit well. Under this section, a well owner may notify all the owners in the unit of its intent to conduct subsequent operations. This notice shall contain: (1) a detailed description identifying the well to which the proposed operations pertain, the work to be done, and the new location and objective depth if changed as a result of the work; (2) a copy of the order of the commissioner creating the drilling unit; (3) an AFE for the cost of conducting the operations that is dated within 120 days of the mailing of the notice; (4) an estimate of the notified owner's approximate percentage of well participation; and (5) a copy of all available logs, core analysis production data, and well test data concerning the well that has not been made public. This section also provides that a drilling owner may recoup a risk charge from a nonparticipating owner that has not paid up for the drilling or previous operations conducted on the subject well. The drilling owner must provide notice of this, along with the opportunity to participate in the subsequent operations. However, the nonparticipating party must make all outstanding payments within 60 days of receipt of this notice to participate.

S.B. 91, 2021 Reg. Sess. (La. 2021).

3. House Bill 331 (HB 331): Authorizing the State to Enter into Certain Agreements with Private Landowners Regarding Boundaries Between State Owned Water Bottoms and Privately Owned Water Bottoms

HB 331 proposes amendments to Article IX, Sections 3 and 4(A) of the Louisiana Constitution. The current Louisiana Constitution states that the legislature shall neither alienate nor authorize the alienation of the bed of a navigable body of water except for purposes of reclamation by the riparian owner to recover land lost due to erosion. The Constitution also currently allows the leasing of state land and water bottoms for mineral purposes. HB 331 maintains these two stipulations while giving more power to the legislature in dealing with water bottoms. The proposed bill would allow the state to enter into agreements with riparian landowners to establish a permanent, fixed boundary within a body of water, regardless of navigability and the type of body of water, and also accept the donation of

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will be chargeable as a unit operating cost recoverable by the drilling owner out of the tract's allocable share of net production proceeds.

any riparian landowner owned or claimed lands, subject to a perpetual mineral reservation. One important note on these two additional powers is that they only apply to the coastal zone as defined in R.S. 49:214.24.

Another noteworthy, proposed change allows the state to agree to the disposition of mineral rights underlying a body of water, regardless of navigability and type of body of water, the ownership of which is subject to an agreement authorized by one of the two new powers granted to the state as discussed above.

H.B. 331, 2021 Reg. Sess. (La. 2021).

4. House Concurrent Resolution 98 (HCR 98): Expressing the Louisiana Legislature's Opposition to Disproportionately Increasing the Tax Burden on the Natural Gas, Oil, and Fuel Industries

HCR 98, enrolled during the 2021 Regular Session, expressed the Louisiana Legislature's opposition to disproportionately increasing the tax burden on the natural gas, oil, and fuel industries, noting the importance of the industries and that higher taxes would not just burden these individuals, but people across the nation.

H.R. Con. Res. 98, 2021 Reg. Sess. (La. 2021).

5. Severance Taxes on Oil Production

a) Severance Taxes Related to Specific Wells

Several bills were introduced during the 2020 Second Extraordinary Session and the 2021 Regular Session aimed at the reduction/exemption of severance taxes levied on oil produced from certain types of wells. These Bills focus on stripper[5], incapable[6], orphaned[7], newly drilled[8], and newly enhanced wells[9].

b) Scheduled Reductions in Severance Taxes on Oil Production

House Bill 30 ("HB 30"), aimed at reducing severance taxes on oil, was introduced in the House during the 2021 Regular Legislative Session.

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5. H.B. 8, 2020 Second Extraordinary Sess., (La. 2020); H.B. 26, 2021 Reg. Sess., (La. 2021).

6. H.B. 28, 2020 Second Extraordinary Sess., (La. 2020).

7. H.B. 29, 2020 Second Extraordinary Sess., (La. 2020); H.B. 57, 2021 Reg. Sess., (La. 2021); and H.B. 662, 2021 Reg. Sess., (La. 2021).

8. H.B. 29, 2020 Second Extraordinary Sess., (La. 2020); H.B. 57, 2021 Reg. Sess., (La. 2021); and H.B. 661, 2021 Reg. Sess., (La. 2021).

9. H.B. 29, 2020 Second Extraordinary Sess., (La. 2020); H.B. 57, 2021 Reg. Sess., (La. 2021); and H.B. 658, 2021 Reg. Sess., (La. 2021).

The proposed bill would gradually lower the severance taxes levied on oil production. The current rate is 12.50% of its value at the time and place of severance. The proposed bill sets out a schedule reducing the taxable rate starting at 12.50% of its value at the time and place of severance from January 1, 2021, to July 1, 2021. The schedule then provides for a 0.50% rate reduction every year until the rate is set at 8.50% starting July 1, 2029, and for all periods thereafter.

HB 30 also proposes different tax rates for specific wells. For oil wells that are incapable of producing an average of more than ten barrels of oil per producing day during the entire taxable month, the tax rate would be 3.125% at the time and place of severance and would thereafter be classified as a stripper well for severance tax purposes. For oil produced from a well in a stripper field (defined by the commissioner of conservation as a mining and horizontal drilling project which utilizes gravity drainage to a collection point in a downhole operations room), the rate would be changed to 3.125% of its value at the time and place of severance.

H.B. 30, 2021 First Reg. Sess. (La. 2021).

6. Engrossed House Bill 669 (HB 669): Proposed Increase in Hazardous Waste Fees

HB 669 was introduced by Representative Gary Carter [D] during the 2021 Regular Legislative Session.

The bill, as proposed, would allow the Department of Environmental Quality (DEQ) to increase annual hazardous waste fees for very small, small, and large quantity generators. If enacted, the maximum fees for such generators would increase to Two Hundred Fifty Dollars ($250.00) for very small quantity generators, Six Hundred Dollars ($600.00) for small quantity generators, and Seven Hundred Fifty Dollars ($750.00) for large quantity generators and would be deposited to the Environmental Trust Account.

HB 669 also proposed an annual prohibited waste fee which would not exceed Two Hundred Fifty Dollars ($250.00) that would also be deposited to the Environmental Trust Account.

H.B. 669, 2021 First Reg. Sess. (La. 2021).

7. Enrolled Senate Concurrent Resolution 34 (SCR 34): Proposed Expedition to the Department of Natural Resources' Permitting Process

Senator Hewitt and Representative Garofalo introduced SCR 34 during the 2021 Regular Session. This resolution urges the Department of Natural Resources to review permitting times and to report back, no later than December 31, 2021, to the Louisiana Legislature, any recommendations on

regulatory and/or statutory changes that could expedite the permitting process.

The resolution notes that coastal use permitting times in Louisiana range from four to thirteen months, whereas the same process in Texas takes significantly less time. Further, there is no mandatory cap on the processing time. Due to Louisiana's proximity to Texas, these states often compete for these offshore projects which create revenue, jobs, etc. for the state where the project is located. These lengthy permitting times create additional costs for the permit applicants and therefore create a disincentive for operating in Louisiana. For these reasons, the Department of Natural Resources must take action to decrease permitting times.

S.C.R. 34, 2021 Reg. Sess. (La. 2021).

8. Senate Bill 122 (SB 122): Amending the Coastal Zone Management Program as it Provides for Collection of Monies from Enforcement Actions of Coastal Use Permits

SB 122, engrossed during the 2021 regular session, provides amendments to the Coastal Zone Management Program. The first of the key proposed amendments affect the mandate that fifty percent of the Coastal Zone Management Program funds collected to be used to reimburse the Department of Natural Resources for enforcing the provisions of the Program and shall be deposited in the Coastal Resources Trust Fund. SB 122 proposes this section be changed to stipulate that seventy-five percent of funds, after deducting the costs to reimburse the Department of Natural Resources for their expenses in enforcing the provisions of the Program, be placed in the Coastal Protection and Restoration Fund and shall be used for integrated coastal protection.

The second key proposed amendment in this bill affects the Wetlands Conservation and Restoration Fund. The Program currently provides for twenty-five percent of funds collected to be placed in the Wetlands Conservation and Restoration Fund. SB 122, however, proposes the deletion of this section entirely, accounting for the extra twenty-five percent of funds that would be going to the Coastal Protection and Restoration Fund if passed.

S.B. 122, 2021 Reg. Sess. (La. 2021).

9. Chaptered House Bill 72 (HB 72): Proposed Rule Authorizing the Secretary of the DEQ to Establish a Voluntary Self-Audit Program

HB 72 was introduced by Representative Jean-Paul Coussan [R] during the 2021 Regular Legislative Session.

The proposed bill would amend Section 1. R.S. 30:2030(A). The proposed amendment provides that any information contained in a voluntary self-audit would be treated as confidential by the DEQ and would be withheld from public disclosure until a final decision is made by the department, or a period not to exceed two years, whichever comes first. Information required to be reported to a state or federal agency by statute, regulation, or permit, however, would not be treated as confidential.

Another crucial feature of the bill is the proposed addition of §2044. This addition would establish a program for voluntary environmental self-audits. The program provides for: incentives (reduction or elimination of civil penalties) for conducting self-audits and disclosure of violations to the DEQ; corrective actions for violations discovered because of the self-audit; submission to the DEQ of the plans to correct violations during the self-audit; and fees for the review of self-audit reports and the actions taken to correct reported violations. Certain violations, however, would be excluded from the relief provided by the self-audit program such as (1) violations that result in serious actual harm to the environment; (2) violations that may present an imminent or substantial endangerment to public health or the environment; (3) violations discovered by the department before the written disclosure of the violation to the department; and (4) violations detected through monitoring, sampling, or auditing procedures that are required by statute, regulation, permit, judicial, or administrative order, or consent agreement.

H.B. 72, 2021 Reg. Sess. (La. 2021).

10. House Bill 58 (HB 58): Amending the Time Frame for Receipt of Certain Revenues to be Credited to the Mineral and Energy Operation Fund

The Mineral and Energy Operation Fund obtains funds from unused portions of the Bond Security and Redemption Fund. The Bond Security and Redemption Fund receives funds from non-judicial settlements, including, but not limited to, settlements of disputes of royalty audit findings and court-awarded judgments and settlements.

The Mineral and Energy Operation Fund was originally meant to receive one million six hundred thousand dollars ($1,600,000.00) from the Bond Security and Redemption Fund and an additional nine hundred thousand dollars ($900,000.00) for fiscal years 2017-2018 through 2020-2021. HB 58 proposes amending the $900,000.00 payments to be made for fiscal years 2021-2022 through 2024-2025.

H.B. 58, 2021 Reg. Sess. (La. 2021).

11. House Concurrent Study Request 3 (HCSR 3): Studying the Impact of Federal Laws and Regulations on the Use of Injection Wells

HCSR 3, introduced by Representative McCormick during the 2021 Regular Session, requested the House Committee on Natural Resources and Environment and the Senate Committee on Natural Resources to form a joint committee to study and make recommendations concerning the state's underground injection control program. HCSR 3 requests that the joint committee evaluate the Louisiana Department of Natural Resources' regulatory framework, review all local, state, and federal laws and regulations concerning injection wells, compare Louisiana's regulation of injection wells to Texas', and report their findings to the legislature before the commencement of the 2022 Regular Legislative Session.

In addition to the joint committee's review of relevant laws and regulations, this request suggested the solicitation of information and suggestions from numerous entities such as the Louisiana Department of Natural Resources, office of conservation, the Louisiana Legislative Auditor, the Louisiana State University Department of Geology and Geophysics, the Louisiana Oil and Gas Association, the Railroad Commission of Texas, et al.

H.C.S.R. 3, 2021 Reg. Sess. (La. 2021).

12. House Resolution 88 (HR 88): Urging the Commissioner of Conservation to Adopt Rules and Regulations Necessary to Limit the Withdrawal of Groundwater from the Southern Hills Aquifer

HR 88, introduced during the 2021 Regular Session, urged the commissioner of conservation to adopt rules and regulations necessary to limit, by 2026, the commercial and industrial withdrawal of groundwater from the Southern Hills Aquifer to five million gallons of water per day.

The resolution noted that the United States Geological Survey found serious water-level declines and saltwater intrusion in Baton Rouge aquifers. Further, if the current water withdrawal rates continue the trend they are on, the saltwater intrusion will continue, threatening the safe drinking water for as many as ninety thousand people in the Baton Rouge area.

Because this issue falls under the purview of the commissioner of conservation's authority, the Representatives have urged the commissioner to take such actions as necessary to prevent further harm to groundwater levels and groundwater quality.

H.R. 88, 2021 Reg. Sess. (La. 2021).

13. Enrolled Senate Bill 167 (SB 167): To Provide for the Deposit of Monies from the State's Allocation of Federal Monies to the Oil Site Restoration Fund and to Provide for the Sources and Uses of Said Funds

SB 167, enrolled during the 2021 Regular Session by Senator Allain, directs the state treasurer to transfer thirty million dollars ($30,000,000.00) to the Oilfield Site Restoration Fund. These funds would come from federal funds received by the state. One stipulation on the transfer of these funds to the Oilfield Site Restoration Fund is that the Joint Legislative Committee on the Budget must have permitted the use of the funds for oilfield site restoration or the plugging of orphan wells.

Additionally, the bill stipulates that any other federal funds provided for the purpose of restoring orphan oilfield sites shall only be used for that purpose.

S.B. 167, 2021 Reg. Sess. (La. 2021).

III. Judicial Updates

A. Federal Court Cases

1. Moratorium on Public Lands and Offshore Waters – Louisiana v. Biden

This case was brought by thirteen states[10] against the President of the United States and federal officials seeking declaratory and injunctive relief as to the President's Executive Order establishing a moratorium on new oil and gas leasing of public lands and offshore waters. Louisiana v. Biden, 2:21-CV-00778, 2021 WL 2446010 (W.D. La. June 15, 2021).

The Plaintiff States' main contention in this case is that the President and certain federal agencies[11] violated the Administrative Procedures Act ("APA") through the issuance of the disputed executive order and therefore they are entitled to a preliminary injunction and should be allowed to continue leasing public lands and offshore waters. *Id.* at 3. Specifically, Plaintiffs argue that (1) the defendants acted contrary to law in violation of 5 USC 706(2)(A) and (C); (2) acted in an arbitrary and capricious manner in violation of 5 USC 706(2)(A); (3) failed to provide notice and comment required by 5 USC 553(a); and (4) unreasonably withheld and unreasonably delayed agency required activity in violation of 5 USC 706(1). *Id.* at 4.

10. Louisiana, Alabama, Alaska, Arkansas, Georgia, Mississippi, Missouri, Montana, Nebraska, Oklahoma, Texas, Utah, and West Virginia.

11. U.S. Department of the Interior, U.S. Bureau of Land Management, U.S. Bureau of Ocean Energy Management, and the Bureau of Safety and Environmental Enforcement.

The court notes that there is a four-part test used to determine whether a preliminary injunction is appropriate. For a preliminary injunction to be granted, the movant must show (1) a substantial likelihood of success on the merits; (2) they are likely to suffer irreparable harm in the absence of the injunction; (3) the balance of equities is in the movant's favor; and (4) the injunction is in the public's interest. *Id.* at 17.

First, the court addressed the likelihood of success on the merits for each of the plaintiffs' four claims. The first claim made by the plaintiffs is that the defendants acted contrary to law in violation of 5 USC 706(2)(A) and (C).[12] Specifically, the plaintiffs claim that the executive order exceeds the authority granted under the Outer Continental Shelf Lands Act ("OCSLA") and the Mineral Leasing Act ("MLA"). The court first had to address whether this was a programmatic challenge, which cannot be reviewed under the APA, or a discrete agency action, which can be reviewed under the APA. Finding that the pause itself and cancellation of leases and certain lease sales was a challenge to discrete agency action, the court then had to address the plaintiff's likelihood of success on the merits. Opining that the executive order was in direct violation of OCSLA and the MLA, the court found that the likelihood of success on this first claim was substantial. *Id.* at 17-18.

Next, the court addressed the likelihood of success of plaintiffs' second claim that defendants acted in an arbitrary and capricious manner in violation of 5 USC 706(2)(A).[13] Finding that the executive order gives no reason for the pause or cancellation of leases and lease sales, other than to complete a comprehensive review, the court found the challenge to the President's executive order had a substantial likelihood of success on the merits. *Id.* at 18.

Third, the court addressed the likelihood of success of the plaintiffs' third claim that defendants failed to provide notice and comment required by 5 USC 553(a).[14] Finding that the executive order is a substantive rule,

12. Authorizes courts to hold unlawful and set aside agency actions not in accordance with law, or in excess of statutory authority.

13. Under the APA, administrative agency actions that are arbitrary, capricious, abuse discretion, or are otherwise unlawful shall be set aside by the court.

14. Requires rules to undergo notice and comment unless they are exempt. The two exceptions are (1) interpretive rules, general statements of policy, or rules of agency organization, procedure, and practices, and (2) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons in the rule issued) that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.

and no exceptions to the notice and comment requirements applied, the court found this claim also had a substantial likelihood of success on the merits. *Id.* at 18-19.

Finally, the court addressed the plaintiffs' claim that defendants unreasonably withheld and unreasonably delayed agency required activity in violation of 5 USC 706(1).[15] The main question addressed by the court here is whether these actions sought by the plaintiffs, essentially reversing the pause, are actions the defendants are required to take. Finding that some of the lease sales had already been approved and that those that had not yet been approved were only paused because of the executive order, the court found that the plaintiffs also had a substantial likelihood of success on the merits for their fourth claim. *Id.* at 19-21.

Finding that all the plaintiffs' claims had a high likelihood of success on the merits, the court then turned to the second criteria for preliminary injunctions: whether movants are likely to suffer irreparable harm in the absence of the injunction. To show the harm is irreparable, the plaintiffs must show that the actions cannot be undone through monetary remedies. Testimony was presented that the plaintiff states would sustain damages due to reduced funding for bonuses, ground rent, royalties, and rentals because of the pause. Further, additional damages would include the loss of jobs in the oil and gas sector, higher gas prices, losses by local municipalities and governments, as well as damage to Plaintiff States' economies. Although one could see how this could be remedied through monetary means, the defendants would have sovereign immunity and would therefore not have to pay for these damages. Therefore, the court found that there was a substantial threat of irreparable injury to the movants absent a preliminary injunction. *Id.* at 21.

Next, the court addressed the last two elements: whether the balance of equities is in the movant's favor and the injunction is in the public's interest. The court addressed these two elements together because they overlap considerably. The court found that both elements weigh in favor of granting the preliminary injunction. They had already addressed the potentially significant harm to the Plaintiff States, but in addition to that, the court found that if the preliminary injunction were granted the only harm to the defendants would be that things would merely remain the same. Therefore, the court found that the balance of equities weighed in favor of the plaintiffs and the injunction was in the public's interest. *Id.* at 21-22.

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15. Provides that the reviewing court under the APA shall compel agency action unlawfully withheld or unreasonably delayed.

For all the foregoing reasons, the court, finding that the movants had met their burden, granted the motion for preliminary injunction. *Id.*

One last note on this. The court, due to all of the different states involved, addressed the geographic scope of the injunction. They noted that they do not normally favor nationwide injunctions, however, in the name of uniformity, they deemed it necessary here. *Id.*

B. State Court Cases

1. Subsequent Landowner Issues

a) Litel Explorations, L.L.C. v. Aegis Development Company, L.L.C.

This case deals with a surface owner's ("Litel") claim against multiple oil companies, alleging that two separate tracts of land that Litel owned had been contaminated by companies' pre-purchase exploration and production activities. Litel Expls., L.L.C. v. Aegis Dev. Co., L.L.C., 2020-373 (La. App. 3 Cir. 11/12/20); 307 So.3d 1087, writ denied sub nom. Litel Expls., L.L.C. v. Apache Dev. Co., L.L.C., 2020-01428 (La. 2/9/21); 310 So.3d 184.

Litel came to own the two subject tracts in 2016. Shortly thereafter, Litel filed suit against thirty-six defendants alleging the two tracts were contaminated by oil and gas exploration and production activities. Of the thirty-six defendants, MOEPSI, Apache, and BP filed motions for summary judgment essentially stating that Litel could not enforce obligations under already terminated leases. The District Court granted partial summary judgment in favor of the oil companies and dismissed all of Litel's claims seeking to enforce companies' obligations under the mineral leases executed by the oil companies and Litel's predecessors. Litel sought supervisory writs from the District Court's decision. *Id*. at 1-3.

On appeal, MOEPSI, Apache, and BP made two assertions. First, case law supports the argument that, under the subsequent purchaser doctrine, Litel has no right or actual interest in recovering from a third party for damage which was inflicted on the property before this purchase, in the absence of an assignment or subrogation of the right belonging to the owner of the property when the damage was inflicted. Second, it is impossible to transfer rights under an expired mineral lease. Therefore, because the subsequent purchaser rule applied and the leases had expired, the motion for summary judgment was properly granted. *Id.* at 5-6.

The court, finding MOEPSI, Apache, and BP's arguments persuasive, held the district court did not err in its granting of the motions for summary judgment and denied Litel's writ application. *Id.* at 8-9.

b) Lexington Land Development, L.L.C. v. Chevron Pipeline Company

The current property owners ("Lexington") in this case brought claims against the prior mineral and surface lessee who conducted oil and gas exploration and production activities. Lexington asserted claims for damages as a result of negligent operation of a hydrocarbon pipeline. The trial court dismissed these claims, which Lexington appealed. Lexington Land Dev., L.L.C. v. Chevron Pipeline Co., 2020-0622 (La. App. 1 Cir. 5/25/21), reh'g denied (July 13, 2021).

Lexington came to own the property from a group of owners known as "the Hoffman Heirs." The Hoffman Heirs had leased the minerals to the California Company in 1959, with the lease getting assigned numerous times throughout the years. During this time, Shell Pipeline Company came to operate a pipeline that traversed the subject property. As part of the purchase of the property from the Hoffman Heirs, Lexington had some environmental tests done. *Id.* at 4. Remediation of the property was required after the test results came back unsatisfactory to the lender. In 2007, Lexington was notified that Shell's pipeline had ruptured which gave rise to the claims in the case at hand. *Id.* at 5. Chevron, who was assigned the mineral lease from the California Company, claimed that Lexington was barred from bringing this claim under the subsequent purchaser rule. The trial court agreed and granted Chevron's motion for partial summary judgment. *Id.* at 6.

In response, Lexington obtained assignments of rights from the Hoffman Heirs on the leases that had already expired. *Id.* at 6 and 8. Chevron filed a peremptory exception of prescription stating Lexington's claims were facially prescribed because their operations ceased in 1991. Further, they claimed that if not prescribed on the face of the prescription, the claims were subject to the liberative one-year prescription because Lexington has actual knowledge of the alleged damage no later than 2007 when the original petition was filed. They also filed a motion for partial summary judgment claiming the Hoffman Heirs could not transfer rights under an expired lease. The trial court, maintaining Chevron's peremptory exception of prescription, but denying all other claims, dismissed all of Lexington's claims with prejudice. Lexington appealed. *Id.* at 8-9.

On appeal, addressing the peremptory exception of prescription, the court found no error in the district court's ruling. There was much evidence presented by both sides on this issue, but ultimately the court agreed with Chevron that, at the latest, Lexington had knowledge of the property's condition, or would have had they pursued the information from the reports

to determine the true condition of the property, when they had the environmental assessment done in 2005. *Id.* at 25.

Addressing Lexington's claim that they were assigned rights to sue under the leases from the Hoffman Heirs, the court again found in favor of Chevron. Even citing the *Litel* case discussed above, the court found that the Hoffman Heirs could not transfer rights to Lexington under an expired mineral lease. *Id.* at 27.

The last of Lexington's two assignments of error contend that the trial court erred in granting the partial summary judgment dismissing its claims for pre-acquisition damages based on the subsequent purchaser rule. In the present case, Lexington did not acquire these rights until after it had filed these claims and until Chevron had already filed a motion for summary judgment. *Id.* at 28-29. Therefore, the court could find no error in the trial court's ruling that the subsequent purchaser rule barred Lexington's claims. Affirmed. *Id.* at 32.

2. Negligence: Hill v. TMR Exploration, Inc.

This case deals with a landowner's' appeal of a district court's grant of a motion for summary judgment in favor of an oil purchaser whom the landowners had claimed was negligent in their purchase of oil that was obtained as a result of subsurface trespass. Hill v. TMR Expl., Inc., 2020-0667 (La. App. 1 Cir. 1/27/21); 317 So.3d 801, writ denied, 2021-00318 (La. 5/25/21).

TMR was granted a permit by the Louisiana Commissioner of Conservation to drill a well for minerals under a property neighboring the Hills. Upon completion, it was determined that the well was located underneath the Hills' property. The permit was amended twice, naming Park Exploration Inc. the new operator, and then Vitol Resources, Inc. the operator. Hill filed suit against TMR, Park Exploration Inc., and Vitol Resources, Inc. alleging subsurface trespass and conversion. A supplemental and amended petition added claims against Sunoco for their role as purchasers of the oil that was obtained as a result of the subsurface trespass. Sunoco filed a motion for summary judgment claiming it was a good faith purchaser. The district court agreed with Sunoco's argument and granted its motion for summary judgment. The Hills appealed. *Id.* at 803-804.

On appeal, the Hills claimed that the district court erroneously applied Civil Code, which provides for the good faith purchaser a defense as a general matter in all sales transactions involving movables not required by law to be registered. Instead, the Hills argue the district court should have

applied the Mineral Code as required in La. R.S. 31:210[16] which preempts the Civil Code. The court , however, found that La. R.S. 31:210 does not apply in this case because its purpose and intent is to "address rental and royalty payments due to parties holding an interest in the 'leased property' when a dispute or other defect in the title exists." The court stated that the Hill's claims, which concern subsurface trespass, are separate and distinct from the recorded lease that covers the neighboring property and therefore, La. R.S. 31:210 is not on point. *Id.* at 805, 808.

Further, the court stated it was unable to locate any provision in the Mineral Code that expressly or impliedly applies to the purchase of oil produced from the property of an unleased mineral owner. For these reasons, the district court correctly applied Louisiana's Civil Code and did not err in granting Sunoco's motion for summary judgment. *Id.* at 808. The Hills later submitted, and were denied, an application for a writ of certiorari to the Supreme Court of Louisiana. Hill v. TMR Expl., Inc., 2021-00318 (La. 5/25/21).

3. Concursus Proceeding Regarding Royalty Ownership: Covey Park Gas, LLC v. Bull Run Acquisitions II, LLC

This case deals with an operator ("Covey Park") who was making payments to a partnership for production drawn from three tracts of land, but was later told by Bull Run Acquisitions II, LLC ("Bull Run") that it was the rightful owner under two of the tracts. Covey Park filed a concursus proceeding in order to determine the proper royalty ownership. Covey Park Gas, LLC v. Bull Run Acquisitions II, LLC, 53,670 (La. App. 2 Cir. 1/13/21); 310 So.3d 777, writ denied, 2021-00235 (La. 4/7/21); 313 So.3d 984.

The Subject Property in this case involves three tracts of land: the South Half of the Southwest Quarter of Sec. 32, T 14 N, R 15 W (S/2 of SW/4); the South Half of the Northeast Quarter of the Southwest Quarter of Sec. 32, T 14 N, R 15 W (S/2 of NE/4 of SW/4); and the South Half of the Southeast Quarter of Sec. 32, T 14 N, R 15 W (S/2 of SE/4). The common

16. La. R.S. 31:210 states: "A purchaser of minerals produced from a recorded lease granted by the last record owner holding under an instrument translative of title to the land or mineral rights leased is fully protected in making payment to any party in interest under the lease unless and until a suit is filed testing title to the land or mineral rights embraced in the lease and the purchaser receives notification of it by registered mail. The purchaser is not entitled to this protection unless he has filed for registry in the conveyance records of the parish in which the land subject to the lease is located notice that the minerals produced have been and will be purchased by him."

owner of these tracts devised the land to Bank of America, as Trustee, in 2005. Bank of America filed a succession proceeding to sell the property, which was granted. Bank of America sold the property to Beaver River Resources ("BRR"). However, the deed only mentioned the property in the SE/4. Covey Park began paying royalties to BRR in 2008 for the three wells it was operating. In September 2018, Bank of America realized they had only conveyed the SE/4 tract and subsequently sold the tracts in the SW/4 to Bull Run. Bull Run sent a demand letter to Covey Park demanding royalty payments. *Id.* at 780.

Covey Park, realizing something was wrong, filed this concursus proceeding. Bull Run filed a motion for summary judgment against BRR (BRR asserted that it had acquired, and believed it acquired, all three tracts) claiming that BRR's deed only conveyed the SE/4 tract and the property description in the deed was not sufficient to put Bull Run on notice that BRR had acquired the other two tracts. The court granted the motion in favor of Bull Run. BRR immediately appealed. *Id.* at 781.

On appeal, BRR claimed that the district court erred because its prospective claim for reformation of the deed created a genuine issue for trial. The court quickly dismissed this claim as written instruments cannot be reformed or corrected to the prejudice of third parties who relied on instruments in the public record. BRR also claimed that since the description in the deed is deficient, Bull Run should have recognized this error. The court dismissed this as well stating that if Bull Run should have known, BRR also should have known, which would have started the 10-year prescriptive period and BRR's claims would have been time barred. BRR's next assignment of error is that the insufficient deed, when coupled with the succession papers, would have placed a reasonable buyer on notice that Bank of America intended to sell all three tracts to BRR. As a result, BRR claims that Bull Run was not an innocent purchaser but took the property at the peril of BRR's claim. The court dismissed this argument as well, noting that third persons need only look to the appropriate mortgage or conveyance records to determine adverse claims and succession records are not part of these records. *Id.* at 783-784.

For all the foregoing reasons, the court affirmed the district court's ruling. *Id.* at 785. BRR later filed, and was denied, an application for a writ of certiorari to the Supreme Court of Louisiana. Covey Park Gas, LLC v. Bull Run Acquisitions II, LLC, 2021-00235 (La. 4/7/21); 313 So.3d 984.

4. Contamination Caused by Oil and Gas Exploration and Production Activities: Ex Rel Tureau v. BEPCO, L.P.

This case deals with contamination of property caused by oil and gas exploration and production activities. The property owner filed this action seeking regulatory compliance and injunctive relief. State ex rel. Tureau v. BEPCO, L.P., 2021-0080 (La. App. 1 Cir. 5/19/21)

Justin Tureau, the property owner, initiated these proceedings in 2017 when he filed a petition for injunctive relief and for costs and attorney's fees against BEPCO, BOPCO, Chisholm, Chevron, and Hess for violations of Statewide Order 29-B.[17] According to the petition that was filed, Hess and Chevron drilled and operated numerous wells on Tureau's property which included the construction of unlined earthen pits that were never closed or were not closed in accordance with the relevant laws of Louisiana. BEPCO, BOPCO, and Chisholm, on the other hand, drilled wells on the adjacent property that allegedly contaminated Tureau's land. Tureau sent the Commissioner of Conservation (the "Commissioner") a formal notice of these violations and stated that if the Commissioner did not file suit against those involved, then he would. After a second letter went unanswered, Tureau filed suit as an adversely affected person in lieu of the State of Louisiana. *Id.* at 2-3.

BEPCO and BOPCO responded stating that Tureau's claims were barred due to the one-year prescriptive period applicable to delictual actions and that Tureau knew of the claims when he filed a prior suit related to the same property in 2013, more than four years after the current suit was filed. In response, Tureau stated that his claims were not given an applicable prescriptive period by the Louisiana Legislature. Alternatively, Tureau claimed these were ongoing violations and because the State of Louisiana is the real party in interest in the suit based on La. R.S. 30:16, prescription does not run against the state. The court found no merit to Tureau's claim that the State of Louisiana was the actual party in interest. Further, the court agreed with BEPCO and BOPCO that the one-year prescriptive period had run and dismissed Tureau's claims against BEPCO and BOPCO. Tureau appealed. *Id.* at 3-4.

On appeal, the court disagreed with the conclusions of the district court. The court first points out that the defendants relied on Louisiana Civil Code

17. Sets forth specific requirements for the plugging and abandonment of wells; the operation and closure of oilfield pits; the operation of wells and related surface facilities; the storage, treatment, and disposal of non-hazardous waste; the remediation of various contaminants; and the general operating requirements for oil and gas facilities.

article 3492 which states "delictual actions are subject to a liberative prescription of one-year. This prescription commences to run from the day the injury or damage is sustained… When damage is caused to immovable property, the one-year prescription commences to run from the day the owner of the immovable acquired, or should have acquired, knowledge of the *damage*." The off-tract defendants had cited numerous cases in support of their argument. However, all these cases involved claims for damages. This was a claim for injunctive relief. *Id.* at 4-5.

As further support, the court looked to La. R.S. 30:16[18] noting that the legislature created a statutory scheme whereby persons adversely affected by violations of conservation laws, rules, orders, or regulations and who have satisfied the necessary requirements, can bring administrative enforcement suits. Administrative enforcement suits, such as this claim brought under La. R.S. 30:16, are not subject to the one-year liberative prescriptive period for delictual actions. *Id.* at 5. The court also cited two cases, Eagle Pipe & Supply, Inc. v. Amerada Hess Corp., 2010-2267, 2010-2272, 2010-2275, 2010-2279, 2010-2289 (La. 10/25/11), 79 So.3d 246, and Marin v. Exxon Mobil Corp., 2009-2368 and 2009-2371 (La. 10/19/10), 48 So.3d 234, for the principle that landowners always have the right to seek a regulatory cleanup of their property and the legislature has made as much known.

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