

OG Energy Education Series

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# Current Issues in Louisiana Oil & Gas Law

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*Patrick Schenkel, Attorney*

*Email: [pschenkel@oglawyers.com](mailto:pschenkel@oglawyers.com)*

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# Topics for Discussion

- I. Background on mineral ownership in Louisiana
- II. What is a Mineral Servitude?
- III. What is a Mineral Lease?
- IV. Forced Pooling
- V. Louisiana Risk Fee Statute (La. R.S. § 30:10)



# Terminology Differences

- ❖ County = Parish
- ❖ Real property and personal property = Immovable/movable and corporeal/incorporeal
- ❖ Deed of Trust = Mortgage
- ❖ NO joint ownership
- ❖ Adverse possession = Acquisitive prescription
  - Mineral rights may not be established by acquisitive prescription
- ❖ Life estate = Usufruct
- ❖ Deed = Act of Sale
- ❖ Probate = Succession



# Mineral Ownership in Louisiana

- ❖ NO ownership in place (“fugacious character”).
- ❖ Louisiana does not recognize a separate mineral estate in oil and gas
  - Frost-Johnson Lumber Co. v. Salling’s Heirs, 150 La. 756, 91 So. 207 (1922)
- ❖ Minerals are not susceptible to absolute ownership

# Mineral Ownership in Louisiana (Cont.)

- ❖ Ownership of land includes all minerals occurring naturally in a solid state. Solid minerals are insusceptible of ownership apart from the land until reduced to possession.
  - La R.S. § 31:5
- ❖ Ownership of land DOES NOT include ownership of oil, gas, and other minerals occurring naturally in liquid or gaseous form, or of any elements or compounds in solution, emulsion, or association with such minerals. The landowner HAS THE EXCLUSIVE RIGHT to explore and develop his property for the production of such minerals and to reduce them to possession and ownership.
  - La R.S. § 31:6

# Creation of Mineral Rights

- ❖ A landowner may convey, reserve, or lease his right to explore and develop his land for production of minerals and to reduce them to possession.
  - La. R.S. § 31:15



# Types of Mineral Rights

- ❖ Mineral Servitude
- ❖ Mineral Royalty
- ❖ Mineral Lease



# Mineral Servitude

- ❖ **Mineral Servitude** = the right of enjoyment of land belonging to another for the purpose of exploring for and producing minerals and reducing them to possession and ownership.
  - La. R.S. § 31:21
  
- ❖ May be created only by a landowner who owns the right to explore for and produce minerals when the servitude is created.
  - La. R.S. §31:24

# Mineral Servitude (Cont.)

- ❖ Single servitude may not be created on two or more noncontiguous tracts.
  - La. R.S. §31:73
- ❖ An act creating mineral servitudes on noncontiguous tracts of land creates as many mineral servitudes as there are tracts unless the act provides for more.
  - La. R.S. §31:64

**Black Acre – Mineral Servitude A**

**White Acre – No mineral servitude**

**Black Acre – Mineral Servitude B**

## Mineral Servitude (Cont.)

- ❖ A single mineral servitude is established on a continuous tract of land notwithstanding that certain horizons or levels are excluded or the right to share in production varies as to different portions of the tract or different levels or horizons.
  - La. R.S. §31:68
- ❖ Separate mineral servitudes can be created as to separate horizons on the same contiguous tract of land
  - Roemer v. Caplis, 369 So.2d 1186 (La. App. 2 Cir. 1979)

# Termination of Mineral Servitude

## ❖ A mineral servitude is extinguished by:

- (1) Prescription resulting from nonuse for ten years;
- (2) Confusion;
- (3) Renunciation of the servitude on the part of him to whom it is due, or the express remission of the right
- (4) Expiration of the time for which the servitude was granted, or the happening of the dissolving condition attached to the servitude; or
- (5) Extinction of the right of him who established the servitude
  - La. R.S. §31:27

# Termination of Mineral Servitude (Cont.)

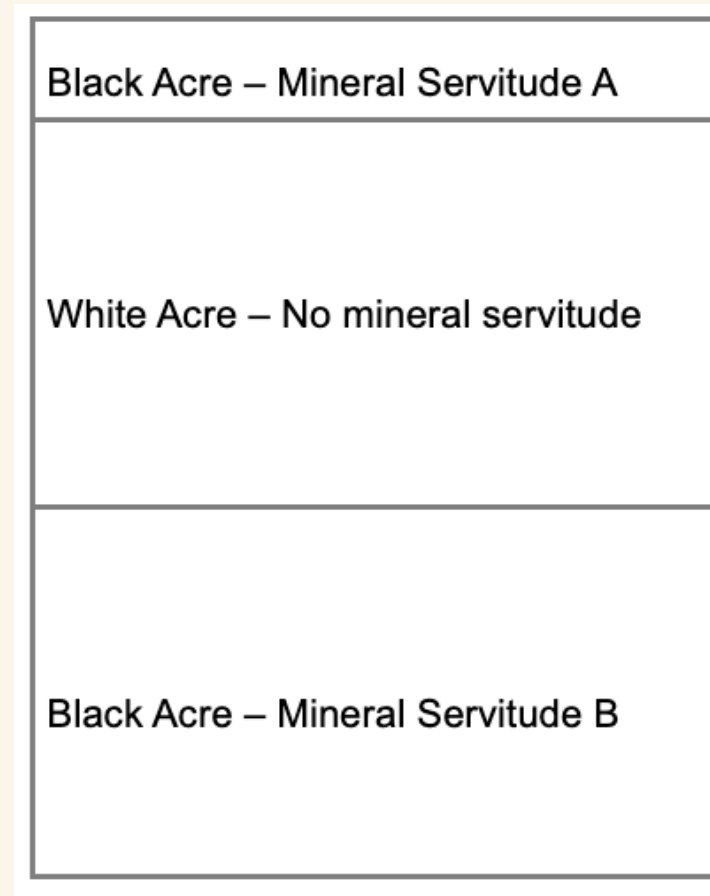
- ❖ The prescription of nonuse running against a mineral servitude is interrupted by good faith operations for the discovery and production of minerals.
- ❖ By good faith is meant that the operations must be
- ❖ Good faith = case-by-case factual determination
  - (1) commenced with reasonable expectation of discovering and producing minerals in paying quantities at a particular point or depth,
  - (2) continued at the site chosen to that point or depth, and
  - (3) conducted in such a manner that they constitute a single operation although actual drilling or mining is not conducted at all times.
    - La. R.S. § 31:29
- ❖ Good faith = case-by-case factual determination

# Termination of Mineral Servitude (Cont.)

- ❖ Prescription of nonuse is also interrupted by the production of any mineral covered by the act creating the servitude
  - La R.S. § 31:26
- ❖ Prescription commences from the date on which the servitude is created
- ❖ Prescription commences anew from the last day on which actual drilling or operations are conducted or from the date of cessation of actual production
- ❖ Actual drilling or mining operations commenced within the prescriptive period interrupt prescription although the operations are not completed until after the date on which prescription would have accrued
  - La. R.S. §31:31

## Termination of Mineral Servitude (Cont.)

- ❖ A producing well located on the mineral servitude will extend all contiguous portions of that mineral servitude
- ❖ A unit well not located on the mineral servitude will extend only those portions of the servitude embraced by the unit



## Termination of Mineral Servitude (Cont.)

- ❖ When a mineral servitude is reserved from acquisitions of land by governments or agencies thereof, prescription of nonuse is interrupted as long as title to the land remains with the acquiring authority, or any successor that is also an acquiring authority.
  - La. R.S. § 31:149(C)
- ❖ An acquiring authority can be the United States, the State of Louisiana, and a subdivision, department or agency of either the United States or the State of Louisiana.
  - La. R.S. § 31:149(B)

# Termination of Mineral Royalty

## ❖ A mineral royalty is extinguished by:

- (1) Prescription resulting from nonuse for ten years;
- (2) Confusion with the title out of which it was created;
- (3) Renunciation of the servitude on the part of him to whom it is due, or the express remission of the right
- (4) Expiration of the time for which the servitude was granted, or the happening of the dissolving condition attached to the servitude; or
- (5) Extinction of the right of him who established the mineral royalty, except that the extinction of a mineral servitude by inheritance or by any act of the servitude owner does not extinguish a royalty burdening the servitude unless the royalty owner is a party to the act or otherwise expressly and in writing to become bound by it.
  - La. R.S. § 31:85

## Termination of Mineral Royalty (Cont.)

- ❖ The 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.
  - La. R.S. § 31:87
- ❖ Production does NOT have to be in paying quantities; just must be actually produced and saved.
  - La. R.S. § 31:88

## Termination of Mineral Royalty (Cont.)

- ❖ Prescription is interrupted on the date on which actual production begins
- ❖ Prescription commences anew from the date of cessation of actual production
- ❖ Production from a conventional or compulsory unit including all or part of the tract burdened by a mineral royalty interrupts prescription, but if the unit well is on land other than that burdened by the royalty, the interruption extends only to that portion of the tract included in the unit.
  - La. R.S. § 31:89

# Mineral Lease

- ❖ **Mineral Lease** = a contract by which the lessee is granted the right to explore for and produce minerals
  - La. R.S. § 31:114
- ❖ NOT susceptible to prescription of nonuse of ten years, but it must include a term
  - La. R.S. §31:106
- ❖ May be granted by a person having an executive interest in the mineral rights on the property leased (i.e. landowner, a servitude owner, or the owner of a severed executive right)
  - La. R.S. §31:107

## Mineral Lease (Cont.)

- ❖ A mineral lease may be granted by the owner of an executive interest whose title is extinguished at a particular time or upon the occurrence of a certain condition, but it terminates at the specified time or on occurrence of the condition divesting the title.
  - La. R.S. §31:117
  
- ❖ A mineral lease is maintained by production in paying quantities.
  - "Production in paying quantities" = when production allocable to the total original right of the lessee to share in production under the lease is sufficient to induce a reasonably prudent operator to continue production in an effort to secure a return on his investment or to minimize any loss.
    - La. R.S. §31:124

# Forced Pooling

## ❖ What is Pooling?

- “Pooling” is the joining together of small tracts sufficient for the granting of a drilling permit under applicable well spacing rules.

## ❖ What is Unitization?

- “Unitization” is the agreement to jointly operate an entire producing reservoir or a prospectively productive area of oil and/or gas

# Forced Pooling (Cont.)

## ❖ 2 Common Types of Units in Louisiana

- 1. Compulsory Units (Forced Pooling)
  - Drilling units
- Conventional Units
  - Declared units
  - Voluntary units

# Forced Pooling (Cont.)

## ❖ Drilling Unit:

- For the prevention of waste and to avoid the drilling of unnecessary wells, the commissioner shall establish a drilling unit or units for each pool, except for those pools which, prior to July 31, 1940, had been developed to an extent and where conditions exist making it impracticable or unreasonable to use a drilling unit at the present stage of development. A drilling unit, as contemplated herein, means the maximum area which may be efficiently and economically drained by one well. This unit shall constitute a developed area as long as a well is located thereon which is capable of producing oil or gas in paying quantities.
- La. R.S. §30.9(B)

## Forced Pooling (Cont.)

- ❖ Where the owners have not agreed to pool their interests, the commissioner shall require them to do so and to develop their lands as a drilling unit, if he finds it to be necessary to prevent waste or to avoid drilling unnecessary wells.
  - La. R.S. §30:10(A)(1)
- ❖ Creation of the drilling unit can be done prior to drilling the proposed unit well, while drilling or after the drilling has been completed.
- ❖ Once a unit has been established, the Commissioner may appoint an operator to extract oil and gas from a reservoir.
  - Hunt Oil Co. v. Batchelor, 644 So. 2d 191, 196 (La. 1994)

# Louisiana Risk Fee Statute

- ❖ The Louisiana Risk Fee Statute (La. R.S. §30:10) seeks to allocate the risk of drilling certain wells as between "drilling" owners and "non-drilling" owners.
- ❖ Under the Risk Fee Statute, the drilling owner has the option to give all other owners in the unit, statutory notice and an opportunity to elect to participate in the risk and expense of the unit well by advancing their pro rata share of the total anticipated costs of the proposed well.

# Louisiana Risk Fee Statute (Cont.)

## ❖ Such notice shall contain:

- (aa) An authorization for expenditure form (AFE), which shall include a detailed estimate or the actual amount of the cost of drilling, testing, completing, and equipping such well. The AFE shall be dated within one hundred twenty days of the date of the mailing of the notice.
- (bb) The proposed or actual location of the well.
- (cc) The proposed or actual objective depth of the well.
- (dd) An estimate of ownership as a percentage of expected unit size or approximate percentage of well participation.
- (ee) In the event that the well is being drilled or has been drilled at the time of the notice, then a copy of all available logs, core analysis, production data, and well test data from the well which has not been made public.
  - La. R.S. § 30:10(A)(2)(a)(i)

## Louisiana Risk Fee Statute (Cont.)

- ❖ If a “non-drilling” owner elects to participate, such election must be made by mailing written notice by registered mail, or other form of guaranteed delivery and notification method, to the owner drilling or intending to drill the proposed well
  - No email
- ❖ The Election must be made within thirty days after receipt of the initial notice
- ❖ Failure to give timely written notice of the election to participate is deemed to be an election not to participate
  - La. R.S. § 30:10(A)(2)(a)(ii)

# Louisiana Risk Fee Statute (Cont.)

- ❖ La. R.S. § 30:10(A)(2)(b)(i) provides for the following risk fee attributable to non-participating parties:
  - The owner paying for a nonparticipating owner's share of drilling and operating costs can recover a risk fee of two hundred percent (200%) of the carried nonparticipating owners share of drilling, testing and completing the well costs if the nonparticipating owner's interest is derived from a unit well, substitute unit well, or a cross-unit well that serves as a unit well or substitute well.
  - If the carried nonparticipating owner's interest is derived from an alternate well or a cross-unit well that serves as an alternate well, a risk fee of one hundred percent (100%) of drilling, testing and completing the well costs may be recovered. (emphasis added)
- ❖ If the owner of an interest in a unit elects not to participate in the risk and cost of drilling a well, the owner paying for the nonparticipating owner's share of the drilling and operation of a well may recover a risk fee only if the paying owner has made an unsuccessful, good-faith attempt to have the other owners in the unit join in and participate in the risk and cost of drilling the well.
- ❖ Proper notice is required before a risk fee can be imposed.

# Louisiana Risk Fee Statute (Cont.)

- ❖ However, La. R.S. § 30:10(A)(2)(e)(i) provides for the following:
  - The provisions of Subparagraph (b) of this Paragraph with respect to the risk charge shall not apply to any unleased interest not subject to an oil, gas, and mineral lease. (emphasis added)

# Louisiana Risk Fee Statute (Cont.)

- ❖ What about the non-participating owners' royalty and overriding royalty burdens?
  - During the recovery of the actual reasonable expenditures incurred in drilling, testing, completing, equipping, and operating the well, the charge for supervision, and the risk charge, the nonparticipating owner shall be entitled to receive from the drilling owner for the benefit of his lessor royalty owner that portion of production due to the lessor royalty owner under the terms of the contract or agreement creating the royalty between the royalty owner and the nonparticipating owner reflected of record at the time of the well proposal.
    - La. R.S. § 30:10(A)(2)(b)(ii)

# Louisiana Risk Fee Statute (Cont.)

- ❖ What about the non-participating owners' royalty and overriding royalty burdens?
  - In addition, during the recovery set forth in Subitem (ii)(aa) of this Item, the nonparticipating owner shall receive from the drilling owner for the benefit of the overriding royalty owner the lesser of: (I) the nonparticipating owner's total percentage of actual overriding royalty burdens associated with the existing lease or leases which cover each tract attributed to the nonparticipating owner reflected of record at the time of the well proposal; or (II) the difference between the weighted average percentage of the total actual royalty and overriding royalty burdens of the drilling owner's leasehold within the unit and the nonparticipating owner's actual leasehold royalty burdens reflected of record at the time of the well proposal.
    - La. R.S. § 30:10(A)(2)(b)(ii)

# Louisiana Risk Fee Statute (Cont.)

- ❖ What requirements are on the operator to pay?
  - 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. (emphasis added)
    - La. R.S. § 30:10(A)(3)

# The Well Cost Reporting Statute

- ❖ La. R.S. § 30:103.1 is a mechanism for an “unleased owner” in a compulsory unit to obtain information from the operator about the Unit Well Costs and revenue of a unit well
- ❖ Under La. R.S. § 30:103.1, the operator is required to share information, upon request, with mineral interest owners who have no lease with the operator within 90 calendar days from completion of the well.
  - “Whenever there is included within a drilling unit, as authorized by the commissioner of conservation, lands producing oil or gas, or both, upon which the operator or producer has no valid oil, gas, or mineral lease...”

## The Well Cost Reporting Statute (Cont.)

❖ “Whenever the operator or producer permits ninety calendar days to elapse from completion of the well and thirty additional calendar days to elapse from date of receipt of written notice by certified mail from the **owner or owners of unleased oil and gas interests** calling attention to failure to comply with the provisions of R.S. 30:103.1, such operator or producer shall **forfeit his right to demand contribution** from the owner or owners of the unleased oil and gas interests for the costs of the drilling operations of the well.”

- La. R.S. § 30:103.2

# Patrick Schenkel

*Attorney, Oliva Gibbs LLP*



I focus my practice on **due diligence, complex mineral titles, pooling issues, lease analysis, joint operating agreements, surface use issues, title curative, regulatory, litigation and general upstream matters.**



## LOCATION

Based in Houston, Texas



## BAR ADMISSIONS

Texas, Louisiana, Montana



## EDUCATION

B.A. Economics, University of Texas

J.D., Loyola University New Orleans College of Law

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