

The background of the entire page is a photograph of two oil pumpjacks in a field. The sky is a mix of blue, purple, and orange, suggesting a sunset or sunrise. The pumpjacks are dark silhouettes against the lighter sky.

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## Louisiana Oil & Gas Matters Update

Jackie Hickman

February 19, 2020

# Agenda

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- Legislative and regulatory update
- Litigation and jurisprudence update



# Legislative Update

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- Proposed Constitutional Amendment No. 1 (Act 444 of the 2019 Regular Session amending Article VII, Section 21(D)(2) and (3))
- Critical Infrastructure Bill (Act 692)
- Plugging Credit Certificate Program (Title 43, Part XIX, Section 104 of Louisiana Administrative Code)

# Litigation and Jurisprudence

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## Louisiana Supreme Court:

- *Gloria's Ranch, LLC v. Tauren Expl., Inc.*, 2017-1518 (La. 6/27/18); 252 So. 3d 431, *reh'g granted in part*, 2017-1518 (La. 9/7/18); 251 So. 3d 392
  - Holdings:
    - Mortgagee not an owner of the lease, no violation of mineral code articles requiring release of mineral lease
    - Lease obligations were indivisible, so lessees are solidarily liable
    - Lessor entitled to double, not triple amount of unpaid royalties

# Litigation and Jurisprudence

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## Louisiana Intermediate Appellate Courts:

- *Avanti Expl., LLC v. Robinson*, 2018-750 (La. App. 3 Cir. 4/17/19); 268 So. 3d 1093
- *Joseph v. Sec'y, Louisiana Dep't of Nat. Res.*, 18-414 (La. App. 5 Cir. 1/30/19); 265 So. 3d 945, *writ denied*, 2019-00454 (La. 5/20/19); 271 So. 3d 1273
- *Marlborough Oil & Gas, LLC v. Baker Hughes Oil Field Operations, Inc.*, 2018-0557 (La. App. 1 Cir. 11/14/18); 267 So. 3d 102
- *State v. Louisiana Land & Exploration Co.*, 2018-890 (La. App. 3 Cir. 5/15/19), 272 So. 3d 983

# Litigation and Jurisprudence

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## Louisiana Intermediate Appellate Courts:

- *Avanti Expl., LLC v. Robinson*, 2018-750 (La. App. 3 Cir. 4/17/19); 268 So. 3d 1093
  - Issue: Whether pricing adjustments for transportation in oil and gas purchasing contracts are permissible under severance tax statutes
  - Holding:
    - Arms length contacts with purchasers that contain a deduction for purchaser's transportation costs reflect the price paid for the oil and gas and are not a separate, impermissible deduction taken by the producer

# Litigation and Jurisprudence

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## Louisiana Intermediate Appellate Courts:

- *Joseph v. Sec'y, Louisiana Dep't of Nat. Res.*, 18-414 (La. App. 5 Cir. 1/30/19); 265 So. 3d 945, *writ denied*, 2019-00454 (La. 5/20/19); 271 So. 3d 1273
  - Issue: Whether the district court correctly found that DNR improperly issued the permit for the Bayou Bridge Pipeline
  - Holdings:
    - The district court did not give appropriate deference to DNR's interpretation that certain Coastal Use Guidelines did not apply
    - The district court erred in remanding for development of further environmental and emergency/contingency plans
    - DNR did not violate the public trust in permitting the pipeline



# Litigation and Jurisprudence

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## Louisiana Intermediate Appellate Courts:

- *Marlborough Oil & Gas, LLC v. Baker Hughes Oil Field Operations, Inc.*, 2018-0557 (La. App. 1 Cir. 11/14/18); 267 So. 3d 102
  - Issue: Whether a lien on an oil and gas well applied to other wells on the property and whether it affected the servitude on the property
  - Holding:
    - Lien affects the wells drilled by lessee against who the privilege was invoked
    - Lien is effective regardless of servitude interest



# Litigation and Jurisprudence

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## Louisiana Intermediate Appellate Courts:

- *State v. Louisiana Land & Exploration Co.*, 2018-890 (La. App. 3 Cir. 5/15/19), 272 So. 3d 983
  - Issue: Whether discovery regarding the ultimate cost of remediation is relevant to determining a reasonable amount of attorneys' fees
  - Holding:
    - The total cost of the remediation is directly relevant to determining the "results obtained" and is therefore discoverable for purposes of determining attorneys' fees

# Litigation and Jurisprudence

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## Federal Courts:

- *Johnson v. Chesapeake Louisiana, LP*, 16-1543, 2019 WL 1301985 (W.D. La. Mar. 21, 2019)
  - Post-production costs cannot be recovered by an operator from an unleased mineral owner's share of production proceeds. See La. R.S. 30:10(A)(3).
  - No "free ride" because unleased owner involuntarily loses his right to explore—or not explore—his own property. In exchange, the unleased owner is given the equivalent of a "no cost" royalty clause on production proceeds.
  - Specific Mineral Code article controls—not Civil Code article.
- *Par. Of Plaquemines v. Riverwood Prod. Co.*, 18-5217, 2019 WL 2271118 (E.D. La. May 28, 2019)
  - Remand pending before 5<sup>th</sup> Circuit

# Litigation and Jurisprudence

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## Federal Courts:

- *Mary v. QEP Energy Co.*, 18-31107, 2019 WL 4581475 (5<sup>th</sup> Cir. Sept. 20, 2019)
  - As it relates to a pipeline servitude, a “good faith possessor” is defined as 1) possessing by virtue of an act translative of ownership AND 2) does not know of any defects in his ownership. See La. C.C. art. 487.
  - Good faith possessor may keep his profits. Bad faith possessor is required to disgorge his profits to the landowner, but is entitled to reimbursement of his expenses. See La. C.C. art. 486.

# Litigation and Jurisprudence

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## U.S. Supreme Court:

- *Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv.*, 139 S.Ct. 361 (2018)
  - St. Tammany Parish landowner—a timber company—challenge to Fish and Wildlife Service’s designation of their land as “critical habitat” for the dusky gopher frog under Endangered Species Act.
  - Dusky gopher frog not seen on property since 1965, but deemed “essential for conservation of the species” by the district court.
  - Fish and Wildlife Service report calculated that designation could deprive the landowners between \$20.4-\$33.9 million in development value, but the Service determined that these costs were not “disproportionate” to the conservation benefits of designation.
  - SCOTUS remanded case for lower courts to determine what is a “habitat” and whether Service’s assessment of the costs and benefits of designation was arbitrary, capricious, or an abuse of discretion.

# Dusky Gopher Frog

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“Warts dot its back, and dark spots cover its entire body. It is noted for covering its eyes with its front legs when it feels threatened, peeking out periodically until danger passes. Less endearingly, it also secretes a bitter, milky substance to deter would-be diners.” – Chief Justice Roberts

# Litigation and Jurisprudence

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## U.S. Supreme Court:

- *Parker Drilling Mgmt. Servs., Ltd. v. Newton*, 139 S.Ct. 1881 (2019)
  - Plaintiff worked 14-day shifts on drilling platforms off coast of California. Shifts involved 12 hours per day on duty and 12 hours per day on standby. He was paid for his time on duty, but was not paid for his standby time.
  - Alleged that California's minimum wage and overtime laws mandated that he be paid for the time he spent on standby. Parker countered that the Fair Labor Standards Act applied—not California state law—because the platform was located on outer continental shelf which is under the exclusive control of the Federal Government.
  - Supreme Court ruled that because the OCS is under the exclusive control of the Federal Government, federal law applies. State law can only be applied to fill voids.



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