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# A Review of the Proposed Amendment to Louisiana Revised Statutes 30:10

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# Legislation Timeline

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# Senate Bill No. 38 – Big Picture

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1. Changes the framework for the operator's remittance of the nonparticipating owner's burdens
2. Allows an operator to demand payment of the AFE included in risk charge notice with the election to participate
3. Adds a risk charge for a "subsequent unit operation"

# **1. Changes to the Framework for the Operator's Remittance of the Nonparticipating Owner's Burdens**

# Background – *Gulf Explorer*



*Gulf Explorer, LLC v. Clayton Williams Energy, Inc.*, 964 So. 2d 1042 (La. App. 1 Cir. 2007): an operator has no obligation to remit a nonparticipating owner's royalty burdens while recouping costs of drilling, completing, equipping, testing, and operating the unit well or the risk charge under 30:10

# Background – Act No. 743 (2012 Regular Session)

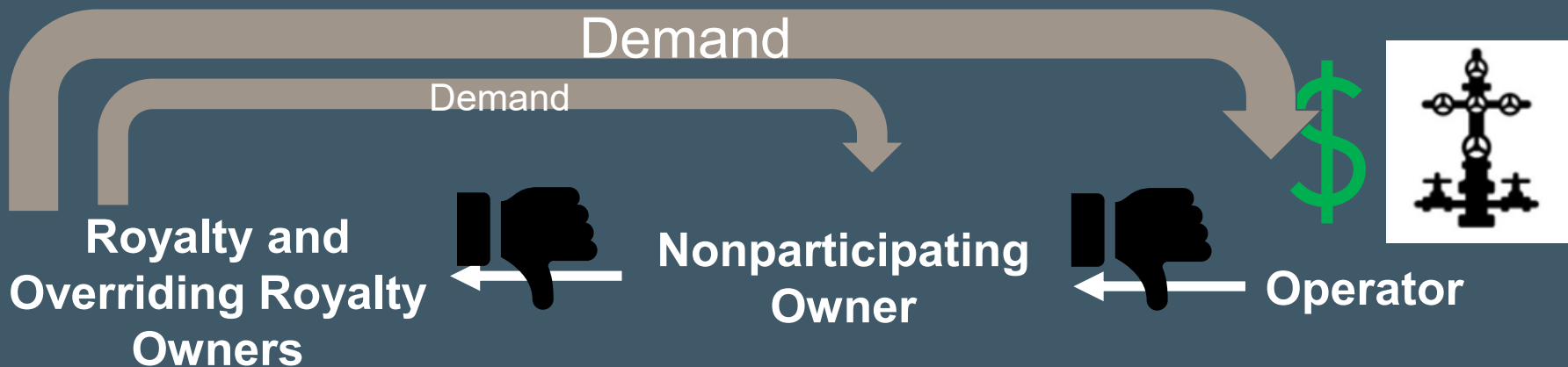
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- Requires an operator to remit a nonparticipating owner's royalty and overriding royalty burdens while recouping well costs and the risk charge:



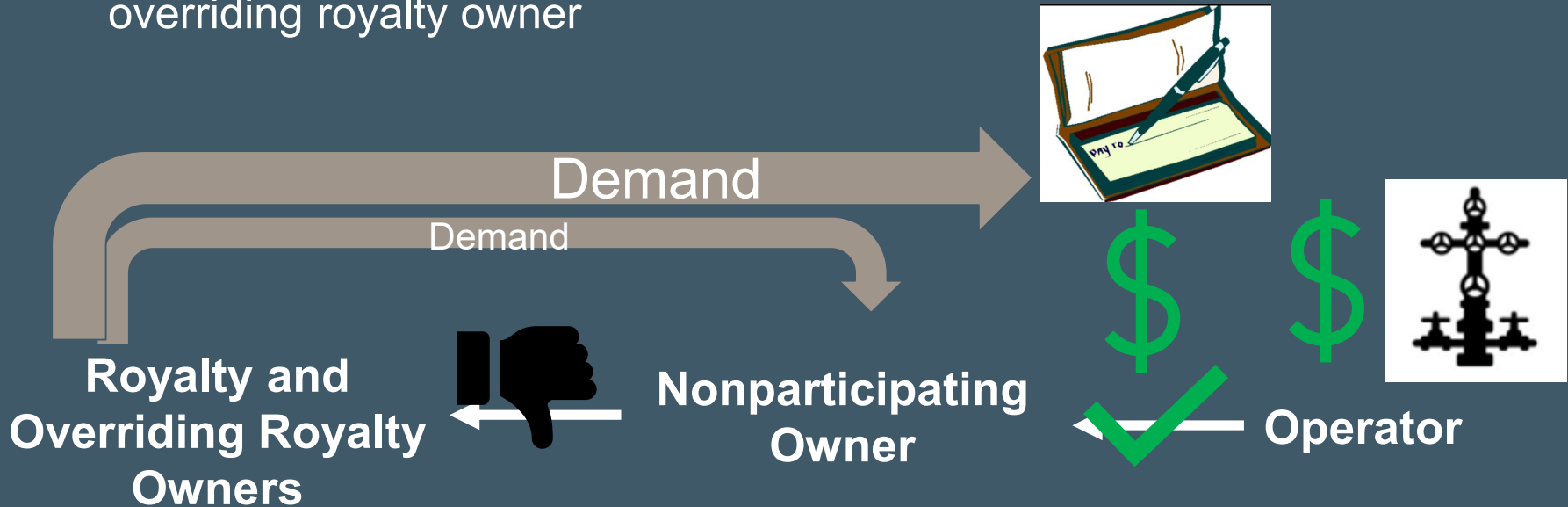
# Background – Act No. 743 (2012 Regular Session)

- New Claim for Royalty Owner/Overriding Royalty Owner Against Operator – If the nonparticipating owner fails to pay, then the royalty owner/overriding royalty owner provides written notice of such failure to the nonparticipating owner and the operator in the same in manner as set out in the Mineral Code



# Background – Act No. 743 (2012 Regular Session)

- Operator's Payment Defense – If the nonparticipating owner fails to pay and the operator has remitted payment to the nonparticipating owner for the benefit of its lessor/overriding royalty owners, proof of payment is a defense to a demand from the royalty owner or overriding royalty owner





# Background – Act No. 743 (2012 Regular Session)

- New Claim for Nonparticipating Owner Against Operator – If the nonparticipating owner does not receive payment from the drilling owner but makes payment to the royalty owner/overriding royalty owner, it must provide written notice of the operator's failure as a prerequisite to judicial demand for damages.



# Senate Bill No. 38 Changes

# SB 38 – Disclosure Requirement

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- Requires the nonparticipating owner to furnish the operator with:
  - Copies of the mineral lease or other agreement creating the ORRI (redactions allowed)
  - Sworn statement of ownership as to the tract(s) of acreage owned by the nonparticipating owner in unit and amounts of the lessor royalty and ORRI burdens
- Additional discretionary disclosure: title opinion (or portions thereof) upon which the sworn statement is based

# SB 38 – Protections for the Operator

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- Requires the nonparticipating owner who has received payment from the operator based on information furnished by the nonparticipating owner to indemnify and hold the operator harmless from any claims related to those payments
- Requires the nonparticipating owner to restore any payments made by the operator in reliance upon incorrect information
- Requires any mineral lease royalty owner or overriding royalty owner making demand on the operator to include a true and correct copy of the mineral lease or agreement creating the ORRI (redactions allowed)

# SB 38 – Protections for the Operator

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- Requires the nonparticipating owner to furnish certified copies of the instrument(s) that constitute the chain of title to the operator at its address on file with the Office of Conservation before the operator must recognize a change in ownership for purposes of remitting royalty and overriding royalty burdens
- Authorizes operator to secure title opinion for nonparticipating owner's tracts from a licensed LA attorney and recoup the cost out of nonparticipating owner's allocable share of production
  - Applicable excerpts must be furnished to the nonparticipating owner

# SB 38 – Clarifications

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- When the nonparticipating owner does not receive payment from the operator, a good faith estimate of the royalty and overriding royalty burdens satisfies the nonparticipating owner's obligation

# SB 38 – Clarifications

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- The formula for calculation overriding royalty remittance is the lesser of:
  - The nonparticipating owner's total % of actual overriding royalty burdens associated with the existing leases which cover each tract attributed to the nonparticipating owner reflected of record at the time of the risk charge notice and
  - The difference between the weighted average % of the total actual lessor royalty and overriding royalty burdens of the drilling owner's leasehold within the unit and the weighted average % of the total actual lessor royalty of the nonparticipating owner's leasehold within the unit reflected of record at the time of the risk charge notice

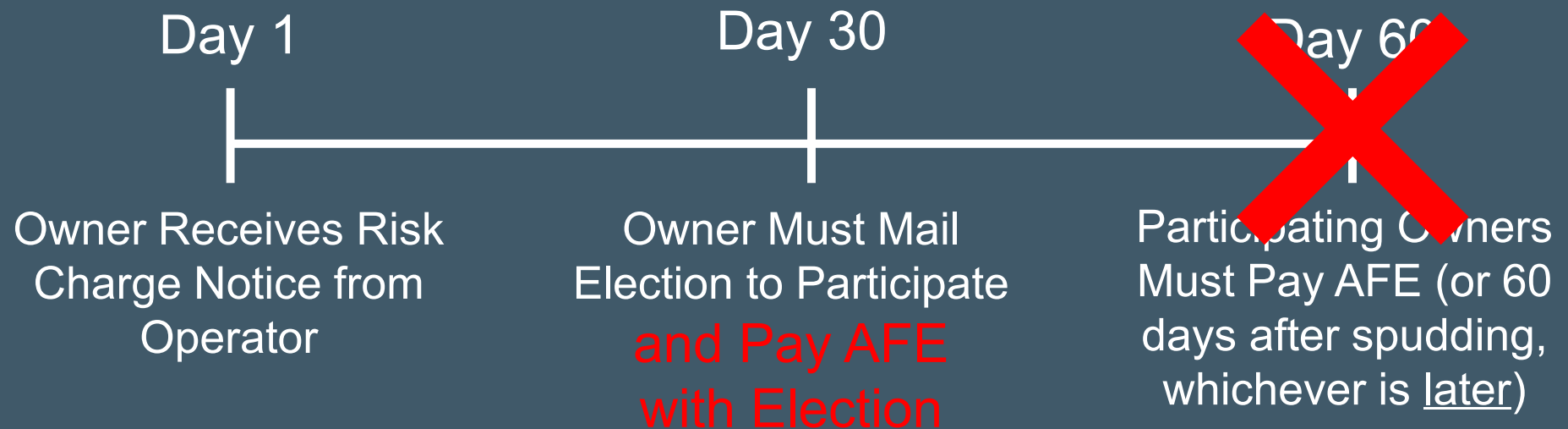
## 2. Changes to Election to Participate



# SB 38 – Change to Election to Participate

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- Gives the operator discretion to include a statement in risk charge notice that payment in full of owner's share of AFE cost estimates is required to be included with an election to participate



# SB 38 – Change to Election to Participate

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- As to estimated costs in the AFE, financial adjustments must be made between the operator and participating owner within 60 days of receipt of invoices in order to account for the difference between any estimates and actual costs
- Failure to timely pay AFE with the election is deemed an election not to participate
- Operator must include language requiring payment of the AFE estimates with the election in the risk charge notice

### **3. Adds Risk Charge for a “Subsequent Unit Operation”**

# Subsequent Unit Operation

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- Provides for a risk charge of 100% of the tract's allocated share of actual reasonable expenditures incurred in conducting the subsequent unit operation, including a charge for supervision
  - Applies regardless of whether the wellbore on which the operations are conducted is a unit well, alternate unit well, substitute unit well, or cross-unit well
- Subsequent unit operation – a recompletion, rework, deepening, sidetrack, or extension conducted within the unitized interval for a unit or units created under La. R.S. 30:9(B)

# Subsequent Unit Operation

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- Unitized interval – the subsurface interval defined in the office of conservation order creating the unit or units that the existing wellbore is serving as a unit well, alternate unit well, substitute unit well, or cross-unit well
- Deepening – an operation whereby any existing wellbore serving as a unit well, alternate unit well, substitute unit well, or cross-unit well is extended to a point within the same unit and unitized interval beyond its previously drilled total vertical depth
- Extension – an operation related to a horizontal well whereby a lateral is drilled in the same unitized interval to a greater total measured depth or extent than the lateral was drilled pursuant to a previous proposal

# Subsequent Unit Operation

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- Recompletion – an operation to attempt a completion in a portion of the unitized interval in the existing wellbore different from the initial completion in the unitized interval
- Rework – an operation conducted in the wellbore after its initially completed in the unitized interval in a good faith effort to secure, restore, or improve production in a stratum within the unitized interval that was previously open to production in that wellbore, including re-perforating, hydraulic fracturing, re-fracturing, tubing repair or replacement, casing repair or replacement, squeeze cementing, setting bridge plugs, and any essential preparatory steps.
  - Excludes – routine maintenance such as acidizing, sand or paraffin removal, repair, or replacement of downhole equipment such as rods, pumps, packers, or other mechanical devices

# Subsequent Unit Operation

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- Sidetrack – the intentional deviation of an existing wellbore serving as a unit well, alternate unit well, or substitute unit well from its actual or permitted bottom hole location within the unit and unitized interval to a different bottom hole location within the same unit and unitized interval or done to drill around junk in the hole or to overcome other mechanical difficulties in order to reach the permitted bottom hole location

# Subsequent Unit Operation Proposal

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- The operator must notify the other owners in the unit in the same manner as the risk charge notice for the drilling of a new well
- The notice must also contain:
  - The well to which the subsequent unit operation relates, the work associated therewith, and the new location and objective depth of the well if changed as a result of work,
  - A copy of the commissioner's order creating the drilling unit to which the subsequent unit operation applies,
  - An AFE that includes a detailed estimate or actual amount of the cost of conducting the subsequent unit operation (dated within 120 days of mailing of notice),
  - An estimate of the notified owner's percentage of well participation, and
  - Copy of all logs, core analysis, production data, and well test data with respect to the well that has not been made available to the public



# Outstanding Balances and Subsequent Unit Operation

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- The operator can recover a risk charge from a nonparticipating owner even when the risk charge from drilling the well or a prior operation on the wellbore has not been recouped if:
  - The operator sends the nonparticipating owner a notice of the subsequent operation and offers the nonparticipating owner the opportunity to participate in the subsequent unit operation upon payment of the outstanding balance owed on prior operations (including a risk charge) within 60 days of receipt and
  - The nonparticipating owner fails to:
    - Elect to timely participate in the subsequent unit operation;
    - Timely pay the entire outstanding balance of previous operations on the wellbore within 60 days of receipt of notice; or
    - Timely pay its share of the AFE for the subsequent unit operation.

# **SB 59 (2021 Regular Session) v. SB 38 (2022 Regular Session)**

## SB 59 – “Net Production Proceeds”

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- Proposed amending La. R.S. 30:10(A)(2)(b)(i) as to nonparticipating owners:  
“the drilling owner shall, in addition to any other available legal remedies to enforce collection of such expenses, be entitled to own and recover out of net production proceeds from such well allocable to the tract under lease to the nonparticipating owner such tract’s allocated share of the actual reasonable expenditures...”

## SB 59 – “Net Production Proceeds”

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- Proposed defining “net production proceeds” as follows:

“the proceeds from the sale or other disposition of production, less severance or production taxes due thereon, and less any amounts paid by the drilling owner to the nonparticipating owner for the benefit of the lessor royalty owner and overriding royalty owner of the nonparticipating owner as provided in Subitems (ii)(aa) and (bb) of this Subparagraph”

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

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Cross motions for summary judgment on legal issue:

When an operator markets production on behalf of an unleased owner, is the unleased owner obligated to pay a pro rata share of any post-production costs incurred to market its gas?

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

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- La. R.S. 30:10(A)(3):

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.

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

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- Court stated that La. R.S. 30:10(A)(3) “directs both when an unleased mineral owner is to be paid and what he is to be paid – the payment of sales proceeds.”
- Holding: La. R.S. 30:10(A)(3) prohibits an operator from recovering any post-production costs incurred in the marketing of an unleased mineral owner’s share of production.

## *Johnson* Fallout

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- Chesapeake filed motion for reconsideration in *Johnson*
  - *Amicus Curiae* briefing filed on the same day by a group of other Haynesville operators, LOGA, LMOGA, and LABI
- The day after the ruling was issued, two putative class action lawsuits were filed on behalf of unleased minerals in Louisiana against BPX and Chesapeake



# *Johnson v. Chesapeake Louisiana, LP,* 2022 WL 989341(W.D. La. March 31, 2022)

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- Motion for reconsideration granted
- “[T]he Court now holds that the doctrine of *negotiorum gestio* – as set forth in Louisiana Civil Code Article 2292, *et seq.* – governs the quasi-contractual relationship between an operator and UMO, thereby providing the mechanism for reimbursement of post-production costs incurred by an operator to market the UMO’s gas.”

# End

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Questions?

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