

Recent Oil and Gas Legal Updates

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The Commissioner, Conditional Allowables, and Contracts

Gladney v. Anglo-Dutch Energy, L.L.C., 16-468 (La. App. 3 Cir. 12/21/16), 2016 WL 7402427, *rehearing denied* (La. App. 3 Cir. 1/25/17).

Unitization

- Commissioner of Conservation authority to create compulsory drilling unit.
- A drilling unit is “the maximum area which may be efficiently and economically drained by one well.” La. Rev. Stat. Ann. § 30:9(B).



Image: <http://www.ncsl.org/research/energy/compulsory-pooling-laws-protecting-the-conflicting-rights-of-neighboring-landowners.aspx>

What Is a Conditional Allowable ?

- Commissioner of Conservation authorizes the operator of a well to extract a specific volume of production from a reservoir prior to the establishment of a unit.
- Requires escrow of funds from date of pre-application notice until unit order issued, and then escrowed funds dispersed in accordance with unit order.
- Purpose: Ensures that owners of tracts within the unit receive their equitable share of production from the sale of minerals.

Background - Gladney v. Anglo-Dutch

- Royalty dispute involving a lease granted August 28, 2009.
- Lease provided for 1/5 royalty.
- Relevant Dates:
 - April 27, 2012 well completed.
 - May 11, 2012, Anglo-Dutch filed pre-application notice to apply for a compulsory drilling and production unit.
 - May 15, 2012 Anglo-Dutch applied for a conditional allowable, granted May 17, 2012.
 - May 18, 2012 Anglo-Dutch commenced sales of production from the gas well.
 - January 23, 2013 Order No. 124-Y granted, establishing the unit, effective October 30, 2012.
- Anglo-Dutch Conditional Allowable.

The Royalty Issue in Gladney

- Plaintiffs' demanded the 1/5 Lessor's royalty for production prior to October 30, 2012 unitization date.
- Anglo–Dutch argued the conditional allowable replaced its obligations under the Mineral Lease to pay full lease-based royalties, and required it to pay only on a unit-basis.
- The Trial Court agreed with Anglo-Dutch and plaintiffs appealed.

Appellate Court Ruling

- Jurisdiction of the Commissioner of Conservation.
 - Trial court's judgment was in direct contrast to longstanding rule that Conservation should not alter private contractual rights.
- Exxon v. Thompson, 564 So. 2d 387 (La. App. 1 Cir. 1990) distinguished.
- Not a collateral attack on the Commissioner's orders.
 - Monsanto Chemical Co. v. Southern Natural Gas Co., 102 So. 2d 223 (La. 1958).

Lessons Learned

- There is a “precarious prospect” that the operator/lessee will have to pay their drillsite lessor contractual royalties over and above those unit-based royalties guaranteed by the conditional allowable.
- How to fix this:
 - Enter into a royalty escrow agreement with a drillsite lessor; or
 - Put a provision in lease that the conditional allowable will supersede the lessor’s royalty.

La. Rev. Stat. Sections 30:103.1 and 103.2

XXI Oil & Gas, LLC v. Hilcorp Energy Co.,

16-269 (La. App. 3 Cir. 9/28/16), 206 So. 3d 885, *rehearing denied*
(La. App. 3 Cir. 11/9/16), *writ application pending*, 16-2181.

What Are §§103.1 and 103.2?

- What does 103.1 require?
 - Reports with information not available in the public records.
 - Required to continue providing quarterly reports until production ceases.
- How do you ask for them?
 - Request by certified mail.
- What is the penalty for failure to comply with §103.1 ?
 - Operator forfeits right to demand contribution from the owner for the costs of the drilling operations of the well, pursuant to § 103.2.

Background of XXI v. Hilcorp

- Prior operator drilled a unit well.
- Hilcorp acquires shut in well and creates drilling unit December 7, 2010.
- Hilcorp recompletes the well, which begins producing on January 11, 2011.
- XXI acquires mineral leases in February 2011.
- On April 21, 2011, XXI sent a letter by certified mail to Hilcorp for its failure to provide information required by 103.1.

103.1 and 103.2 Issues in XXI v. Hilcorp

- Issue #1: Is a mineral lessee, who does not have a lease with the operator or producer of the well, entitled to 103.1 information and 103.2 penalties?
 - Yes, *but* TDX Energy, LLC v. Chesapeake Operating, Inc., 2016 WL 1179206 (W.D. La. 2016)(unpublished opinion)
- Issue #2: What are the “costs of the drilling operations” that are forfeited under 103.2?
 - Pre-production and post-production costs are included.
- Issue #3: Statements must be sworn.

Additional Issue- Detailed/Itemized Statements

Detailed/Itemized

“The statute clearly connects the costs reported to the benefits received in exchange. The ‘detailed’ requirement, therefore, must mean that the report has to relate the cost to the benefit: it must tell the unleased mineral owner what it is getting for its money.”

Brannon Props, LLC v. Chesapeake Operating, Inc., No. 12-30306, 2013 WL 657781 (5th Cir. 2013)

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**Brannon Properties LLC
Unlease Owner Initial Report
DHD 26-16-15 H-1**

PROPERTY NAME	TYPE OF COST	SERVICE MONTH	SERVICE DAY	SERVICE YEAR	AMOUNT
DHD 26-16-15 H-1	TANGIBLE DRILLING COSTS	12	23	2009	\$1,195.00
DHD 26-16-15 H-1	TANGIBLE DRILLING COSTS	1	20	2010	\$1,347.24
DHD 26-16-15 H-1	TANGIBLE DRILLING COSTS	4	22	2010	\$1,288.50
DHD 26-16-15 H-1	TANGIBLE DRILLING COSTS	11	14	2009	\$2,997.00
DHD 26-16-15 H-1	TANGIBLE DRILLING COSTS	12	6	2009	\$7,610.00
DHD 26-16-15 H-1	TANGIBLE DRILLING COSTS	12	21	2009	\$17,175.33
DHD 26-16-15 H-1	TANGIBLE DRILLING COSTS	4	21	2010	\$87,668.11
DHD 26-16-15 H-1	TANGIBLE DRILLING COSTS	7	29	2009	(\$41.41)
DHD 26-16-15 H-1	TANGIBLE DRILLING COSTS				\$41.41
DHD 26-16-15 H-1	TANGIBLE DRILLING COSTS	7	29	2009	(\$41.41)
DHD 26-16-15 H-1	TANGIBLE DRILLING COSTS				\$41.41
DHD 26-16-15 H-1	TANGIBLE DRILLING COSTS	8	24	2009	\$340.00
DHD 26-16-15 H-1	TANGIBLE DRILLING COSTS	7	29	2009	\$41.41
DHD 26-16-15 H-1	TANGIBLE DRILLING COSTS	4	28	2006	\$41.41
DHD 26-16-15 H-1	TANGIBLE DRILLING COSTS	12	22	2009	\$4,422.48
DHD 26-16-15 H-1	TANGIBLE DRILLING COSTS	12	22	2009	\$2,493.97
DHD 26-16-15 H-1	TANGIBLE DRILLING COSTS	12	22	2009	\$325.05
DHD 26-16-15 H-1	TANGIBLE DRILLING COSTS	12	22	2009	\$928.09
DHD 26-16-15 H-1	TANGIBLE DRILLING COSTS	12	22	2009	\$28.74

Lessons Learned

- Provide the required reports to **all** unleased owners.
- Statements must be sworn and detailed.
- There is a lot to lose.

The Subsequent Purchaser Rule and Mineral Servitudes

What Is the Subsequent Purchaser Rule?

- An owner of property has no right to recover damages inflicted on the property before his purchase, in the absence of an assignment or subrogation of the rights belonging to the owner of the property when the damage was inflicted. Eagle Pipe & Supply, Inc. v. Amerada Hess Corp., 10-2267 (La. 10/25/11), 79 So. 3d 246.
- Type of assignment required.
- Doesn't apply to successions:
 - Pierce v. Atl. Richfield Co., 13-1103 (La. App. 3 Cir. 3/19/14), 161 So. 3d 679, *rev'd*, 14-1233 (La. 3/17/15), 166 So. 3d 996.

When Is It Applied?

- “Related” entities
 - Landry v. Laney Directional Drilling Co., 09-615, 2010 WL 2926466, *3 (M.D. La. July 19, 2010) aff’d, 460 F. App’x 413 (5 Cir. 2012).
 - Hazelwood Farm, Inc. v. Liberty Oil and Gas Corp., 02-266 (La. App. 3 Cir. 4/2/03), 844 So. 2d 380, 386-87.
 - St. Jude Med. Office Bldg. Ltd. P’ship v. City Glass & Mirror, Inc., 619 So. 2d 529, 530 (La. 1993).
- What’s the rub?
 - Footnote 80 of the Eagle Pipe decision: “Moreover, because not factually relevant, we express no opinion as to the applicability of our holding to fact situations involving mineral leases or obligations arising out of the Mineral Code.”

When Is It Applied?

- Legacy litigation.
- Applied in the following situations:
 - Claims for damages in tort;
 - Claims for damages pursuant to expired mineral leases;
 - Claims for damages occurring prior to purchase, even where mineral lease is still in effect; and
 - Prohibiting the transfer to sue pursuant to a mineral lease, where the mineral lease expired prior to the act of sale.

What About Mineral Servitudes?

- Two District Courts in the Third Circuit have declined to apply the subsequent purchaser rule to mineral servitude claims under La. R.S. § 31:22:
 - Agri South Group LLC, et. al. v. Exxon Mobil Corporation, et. al., Docket No. 12-8260-A, Div. A, 12th JDC, Avoyelles Parish, La., *writ denied* 15-1301 (La. App. 3 Cir. 11/16/15).
 - Black River Crawfish Farms, LLC v. Jack A. King, Jr. et. al., Docket No. 47,201, Div. B, 7th JDC, Concordia Parish, La.
- It's unclear how the Second Circuit Court of Appeal views this issue:
 - Walton v. Exxon Mobil Corp., 49, 569 (La. App. 2 Cir. 2/26/15), 162 So. 3d 490.

Lessons Learned

- Purchasers/sellers of property:
 - Express assignment of right to sue.
- Mineral servitude owners:
 - Have potential liability to both buyer and seller of property.
- Lessees:
 - New lease instead of assignment?
 - Release from landowner for prior liability.
 - Baseline testing.

Unused Firm Capacity Reservation Fees

Pending Lawsuits

- SM Energy Co. v. BHP Billiton Petroleum (TxLa Operating) Co., et. al., Docket No. 586,635, Div. B, 1st JDC, Caddo Parish, La.
- Hyperion Oil & Gas, LLC v. BHP Billiton Petroleum (TxLa Operating) Co., et. al., Docket No. 589,198, Div. C, 1st JDC, Caddo Parish, La.
- Enduro Resource Partners LLC, et. al. v. BHP Billiton Petroleum (TxLa Operating) Co., et. al., Docket No. 594,583, Div. A, 1st JDC, Caddo Parish, La.
- Camterra Resources Partners, Ltd. v. BHP Billiton Petroleum (TxLa Operating) Co., et. al., Docket No. 594,703, Div. B, 1st JDC, Caddo Parish, La.
- Exco Operating Co., LP v. BHP Billiton Petroleum (TxLa Operating) Co., et. al., Docket No. 594,866, Div. C, 1st JDC, Caddo Parish, La.

Background

- What are unused firm capacity reservation fees?
 - Long term gas pipeline transportation agreements sometimes contain a provision that requires that the seller pay to the gas transportation company a fee, known as a “firm capacity reservation fee,” to ensure that the gas transportation company will reserve the capacity to accept a certain volume of the seller’s gas for transportation.
- The non-operator’s right to elect how its gas is marketed.
- Background of the Pending Lawsuits.

What Are the Claims?

- Operators and non-operators are arguing over who must pay for the unused firm capacity reservation fees, where Joint Operating Agreements and Marketing Letters are silent to such fees.
- Issues:
 - Can an operator pass along these fees?
 - Can an operator retroactively charge these fees?
 - How are these charges allocated?
 - Should a non-operator be notified about the fees, and approve the agreements, or be notified about the execution of the agreements?

Lessons to Learn

- Operator:
 - Include in JOA/Marketing Agreement allocation of firm capacity reservation fees to non-operators and/or operator's discretion to enter into agreements to transport gas, should non-operator elect to have operator market gas.
- Non-operator:
 - Include in JOA/Marketing Agreement a statement that the non-operator will be afforded an election to enter into firm capacity reservation fee agreements.
- Audit rights regarding pipeline agreements.