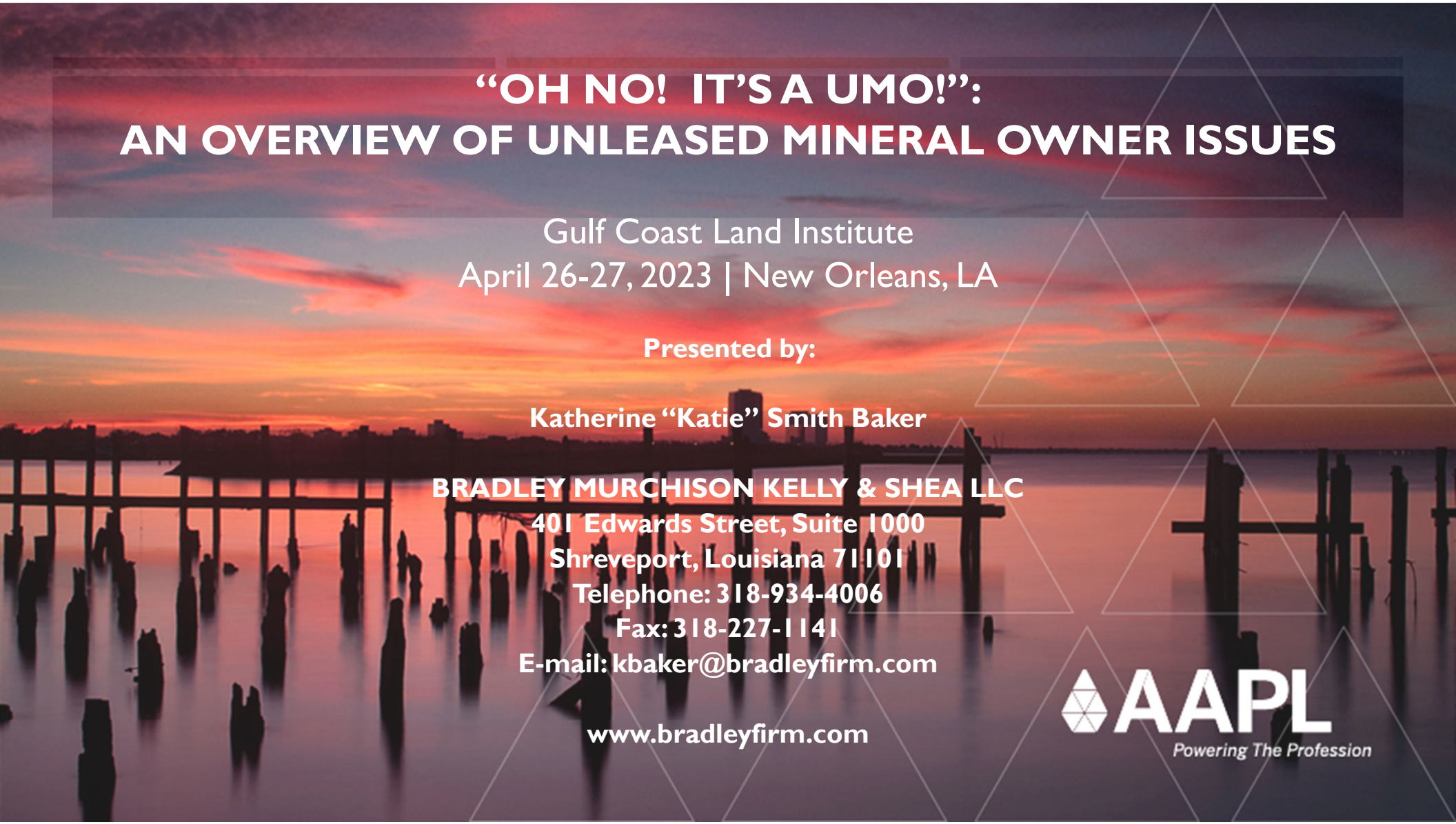

"OH NO! IT'S A UMO!": AN OVERVIEW OF UNLEASED MINERAL OWNER ISSUES

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DEFINITION OF UNLEASED MINERAL OWNER

- There is no such thing as a "mineral owner" in Louisiana.
- Louisiana adheres to the theory of non-ownership of minerals.
- Article 6 of the Louisiana Mineral Code explains that "[o]wnership 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. …"
- However, "[t]he 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." Article 6, Louisiana Mineral Code
- And, one may own a "mineral servitude" which "is 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." Article 21, Louisiana Mineral Code

DEFINITION OF UNLEASED MINERAL OWNER

- Thus, not technically owners of minerals, landowners and mineral servitude owners are vested with the right to explore and develop the property for the production of such minerals and to reduce them to possession and ownership and, therefore, have the right to grant a mineral lease, but have not exercised that right.
- "The owner of an executive interest is not obligated to grant a mineral lease, …" Article 109, Louisiana Mineral Code

UNLEASED MINERAL OWNERS AND LOUISIANA'S "FORCED POOLING" REGIME

- Louisiana's forced pooling regime, in essence, "allows the government to authorize a single operator to drill for oil and gas even when all parties possessing oil and gas interests in the drilling area have not agreed to go forward." *TDX Energy, LLC v. Chesapeake Operating, Inc., 857 F.3d 253, 257 (5th Cir. 2017)*
- Under La. Const. Art. I § 4, a person's private property rights are subject to "reasonable statutory restrictions and the reasonable exercise of the police power."
- In *Delatte v. Woods*, 232 La. 341, 355–56, 94 So. 2d 281, 286–87 (1957), the Louisiana Supreme Court noted that,
  - On numerous occasions we have reviewed and analyzed the conservation laws of this State in respect to their effect on individual and property rights. Necessarily the exercise of the police powers of a state justifies the regulation and conservation of oil, gas and other valuable mineral deposits within its territorial limits. Public interest demands not only a maximum recovery of these minerals but equally as well sound public policy in the conservation and production thereof.

UNLEASED MINERAL OWNERS AND LOUISIANA'S "FORCED POOLING" REGIME

- Two recent cases out of the Western District did a nice job of summarizing Louisiana's forced pooling regime:
  - *Dow Constr., LLC v. BPX Operating Co.*, No. CV 20-9, 2022 WL 1447595 (W.D. La. May 6, 2022), *motion to certify appeal granted*, No. CV 20-9, 2022 WL 1575850 (W.D. La. May 17, 2022)
  - *Johnson v. Chesapeake Louisiana, LP*, No. CV 16-1543, 2022 WL 989341 (W.D. La. Mar. 31, 2022)

- Both cases recognized that the Louisiana's Commissioner of Conservation may join separate tracts of land into a forced pool unit in which the mineral interest owners share in the mineral production from the unit. *TDX Energy, LLC v. Chesapeake Operating, Inc.*, 857 F.3d 253, 257 (5th Cir. 2017) (citing La. R.S. §§ 30:9(B) & 30:10(A)(1)).
- "Unitization enables the Commissioner to authorize an operator to establish an oil and gas drilling unit across multiple tracts of land, even if all owners of oil and gas interests in the drilling unit have not agreed to pool their interests." *B.A. Kelly Land Co., L.L.C. v. Aethon Energy Operating, L.L.C.*, 25 F.4th 369, 374 (5th Cir. 2022).
- "The designated operator is then charged with drilling within the unit and paying a proportionate share of the proceeds of the production to the owners of mineral interests in the unit." *Id.* at 375.

UNLEASED MINERAL OWNERS AND LOUISIANA'S "FORCED POOLING" REGIME

- In the forced pooling context, when mineral interest owners have not contracted with the operator, the forced pooling statutory scheme "has to address a number of issues that contracts usually decide, such as how to allocate costs and risk among those holding interests in the oil and gas, and how the operator should provide an accounting of well production and costs to owners of oil and gas interests." *B.A. Kelly Land Co., L.L.C. v. Aethon Energy Operating, L.L.C.*, 25 F.4th 369, 374 (5th Cir. 2022).

UNLEASED MINERAL OWNERS AND LOUISIANA'S "FORCED POOLING" REGIME

- When discussing section 10, the Louisiana First Circuit Court of Appeal, the Louisiana Third Circuit Court of Appeal, and the Louisiana Supreme Court have all held that the relationship between the operator and an unleased mineral interest owner is quasi-contractual in nature.
- The Louisiana Supreme Court in *Wells v. Zadeck*, 2011-1232 (La. 3/30/12); 89 So. 3d 1145, 1149, held that, "A quasi-contractual relationship is created between the unit operator and the unleased mineral interest owner with whom the operator has not entered into contract."
- "Louisiana jurisprudence provides that a claim against the operator of a unit well brought by the owners of unleased mineral interests in the production unit seeking their statutory share of production from the well is grounded in quasi-contract." *Wells v. Zadeck*, 2011-1232 (La. 3/30/12); 89 So. 3d 1145, 1149; *Taylor v. Woodpecker Corp.*, 93-0781 (La. App. 1 Cir. 3/11/94); 633 So. 2d 1308, 1313; *Taylor v. David New Operating Co.*, 619 So. 2d 1251, 1253–56 (La. App. 3 Cir. 1993) (citing La. R.S. § 30:10(A)(3)); *Taylor v. Smith*, 619 So. 2d 881, 886–88 (La. App. 3 Cir. 1993).

UNLEASED MINERAL OWNERS AND LOUISIANA'S "FORCED POOLING" REGIME

- One type of quasi-contract involves the transaction of another's business, otherwise known as *negotiorum gestio*. As to section 10, the Louisiana First Circuit and Third Circuit have both held that a "unit operator acts as *a negotiorum gestor* or manager of the owner's business in selling the owner's proportionate share of oil and gas produced" pursuant to section 10(A)(3). *Taylor v. Woodpecker Corp.*, 93-0781 (La. App. 1 Cir. 3/11/94); 633 So. 2d 1308, 1313 (*citing David New Operating*, 619 So. 2d at 1255 and *Smith*, 619 So. 2d at 887); see also *J & L Fam., L.L.C. v. BHP Billiton Petroleum Props. (N.A.), L.P.,* 293 F. Supp. 3d 615, 621 (W.D. La. 2018) (Foote, J.).
- Louisiana Civil Code article 2292 provides that "[t]here is a management of affairs when a person, the manager, acts without authority to protect the interests of another, the owner, in the reasonable belief that the owner would approve of the action if made aware of the circumstances."
- The obligations of a unit operator as to an unleased mineral owner are imposed "without any agreement" and instead are "imposed by the sole authority of the laws." *Taylor v. Smith*, 619 So. 2d 881, 886–88 (La. App. 3 Cir. 1993).
- Louisiana Civil Code article 2295, et seq., "sets forth the quasi-contract which results from the transaction by one of another's business." *Taylor v. Smith*, 619 So. 2d 881, 886–88 (La. App. 3 Cir. 1993).
- The recognition that the unit operator acts as a *negotiorum gestor* as to certain aspects of its dealings with unleased mineral owners was recently affirmed in the case of *Johnson v. Chesapeake Louisiana, LP*, No. CV 16-1543, 2022 WL 989341 (W.D. La. Mar. 31, 2022). This categorization impacts the interpretation of certain provision of section 10 as well as applicable prescriptive periods, among other things.

UNLEASED MINERAL OWNERS AND LOUISIANA'S "FORCED POOLING" REGIME

- In a compulsory unit, "[e]ach oil and gas interest owner is responsible for a share of development and operation costs [i.e., the actual reasonable expenditures incurred in drilling, testing, completing, equipping, and operating the unit well]." *TDX Energy*, 857 F.3d at 258 (citing La. R.S. § 30:10(A)(2)).
  - Under the provisions of the Risk Fee Statute, each working interest owner in a compulsory unit must bear its proportionate share of the actual reasonable expenditures of the cost of drilling, testing, completing, and equipping the unit well (collectively, the "Unit Well Costs").
  - In addition, each working interest owner must bear its proportionate share of the actual reasonable operating expenses and a charge for supervision of the operations by the operator (collectively, the "Operating Expenses").
  - To recover costs from the nonparticipating owner's share of production, a drilling owner must show that the expense has actually been incurred and is reasonable. In the event of a dispute relative to the calculation of unit well costs, the commissioner shall determine the proper costs after notice to all interested owners and a public hearing thereon.

UNLEASED MINERAL OWNERS AND LOUISIANA'S "FORCED POOLING" REGIME

- After the operator sends notice to certain owners, the owners may choose to "participate in the risk by contributing to drilling costs up front" or choose not to participate and be subject to a risk charge, which the operator can deduct from the nonparticipating interest owners' share of production. Id. (citing La. R.S. § 30:10(A)(2)(a)(i), (b)(i)).
- However, the risk charge does not apply to any unleased interest not subject to an oil, gas, and mineral lease—i.e., a completely unleased mineral interest owner. Id. at 263 (citing La. R.S. § 30:10(A)(2)(e)(i)).
  - La. R.S. § 30:10(A)(2)(e)(i)): "[t]he 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."
  - The unleased interest in a compulsory unit that is not subject to an oil, gas, and mineral lease (i.e. an unleased mineral owner), can only be charged their share of Unit Well Costs and Operating Expenses.
  - Once the unleased mineral owner's share of Unit Well Costs and Operating Expenses have been recovered from unit production, it becomes entitled to begin to share in unit production.

UNLEASED MINERAL OWNERS AND LOUISIANA'S "FORCED POOLING" REGIME

- La. R.S. § 30:10(A)(3) provides the mechanism by which the unit operator is to compensate the unleased mineral owner (and unleased interests) for its pro rata share of the proceeds of the sale or other disposition of the production from the unit well.
- La. R.S. § 30:10(A)(3), as recently revised in 2022, states as follows:

> 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 sell or otherwise dispose of the share of such production attributable to such tract, and the unit operator sells or otherwise disposes of such 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 or other disposition of production within one hundred eighty days of such sale or other disposition.

UNLEASED MINERAL OWNERS AND LOUISIANA'S "FORCED POOLING" REGIME

ALLEN JOHNSON, ET AL, V. CHESAPEAKE LOUISIANA, LP, DOCKET NO. 16-1543, 2022 WL 989341 (W.D. LA. MARCH 31, 2022)

- Chesapeake was the operator of the Kelley Well, which is the unit well of the HA RA SU86 (an oil and gas unit producing from the Haynesville shale formation).
- The unleased mineral owner plaintiffs ("UMO Plaintiffs") are landowners in the unit and own non-operating, unleased interests in the unit.
- The UMO Plaintiffs alleged that Chesapeake improperly deducted certain post production costs from the Plaintiffs' share of production proceeds from the unit.
- On summary judgment motions, the Court first ruled that that pursuant to Louisiana Revised Statute 30:10(A)(3), an unleased mineral owner is not subject to bearing its proportionate share of post-production costs. The district court found that the silence of Louisiana Revised Statutes 30:10 meant that post-production costs were not deductible.

UNLEASED MINERAL OWNERS AND LOUISIANA'S "FORCED POOLING" REGIME
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- But, on Motion for Reconsideration, Chesapeake raised the raised the doctrine of *negotiorum gestio* or "management of affairs," an argument not previously raised to the Court, as the mechanism for the operator to recover post-production costs from the unleased mineral owners.
- The Court recognized that this was a *res nova* issue but also relied upon prior Louisiana jurisprudence which has defined the relationship of operators and unleased mineral owners as quasi-contractual and governed by not only the provisions of Section 10(A)(3), but also Louisiana Civil Code article 2292, *et seq*.
  - *Wells v. Zadeck*, 2011-1232 (La. 3/30/12), 89 So. 3d 1145, 1149, in which the LASC held that "a quasi-contractual relationship is created between the unit operator and the unleased mineral interest owner with whom the operator has not entered a contract."
  - *Taylor v. Woodpecker Corp.,* 93-0781 (La. App. 1st Cir. 3/11/94), 633 So. 2d 1308, 1313, in which the Louisiana First Circuit Court of Appeal explained,

> We agree that LSA–R.S. 30:10 A(3) gives an unleased landowner a cause of action in quasi-contract under these Civil Code articles. The unit operator acts as a *negotiorum gestor* or manager of the owner's business in selling the owner's proportionate share of oil and gas produced. In return for the right to sell the share of production of the unleased landowner, the unit operator is obligated by law "without any agreement" to pay the unleased landowner his proportionate share of proceeds within 180 days of the sale of production. The "purely voluntary act" of assuming the position of unit operator, and thereby obtaining the right to sell the unleased interest owner's share of production, results in this obligation to account to the unleased interest owner pursuant to LSA–R.S. 30:10 A(3).

UNLEASED MINERAL OWNERS AND LOUISIANA'S "FORCED POOLING" REGIME
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- The Court gave effect to the quasi-contractual relationship that exists between the unit operators and unleased mineral owners by harmonizing the Civil Code regime of *negotiorum gestio* with LSA R.S. 30:10.
- The Court was "convinced that Section 10(A)(3) and Article 2297, which provides that a manager acting as a prudent administrator can recover necessary and useful expenses, can be read in harmony and are not in conflict. As argued by the Chesapeake Defendants, "silence isn't enough," meaning the statute's silence as to post-production costs is not enough to create conflict and/or displace other applicable provisions of the Civil Code." *Johnson v. Chesapeake Louisiana, LP*, No. CV 16-1543, 2022 WL 989341, at *6 (W.D. La. Mar. 31, 2022)
- The Court relied in part on the rationale presented in the *J&L Fam., L.L.C. v. BHP Billiton Petroleum Properties (N.A.), L.P.*, 293 F.Supp. 3d 615, 621 (W.D. La. 2018), where an unleased mineral owner was seeking to recover attorney's fees, even though Louisiana Revised Statutes 30:10 had no provision for an award of attorney's fees. In analyzing the potential right to fee recovery, the court in *J&L* looked to both Louisiana Revised Statutes 30:10 and the quasi-contractual provisions of the Civil Code. Neither contained any provision for attorney's fees. Based on this rationale, the district court in *Johnson* found that it is proper to read both sources of law *in pari materia* and to harmonize them.
- Thus, the Court held that the doctrine of *negotiorum gestio* governs the quasi-contractual relationship between an operator and an unleased mineral owner, thereby providing the mechanism for reimbursement of post-production costs incurred by an operator to market the unleased mineral owner's gas.

UNLEASED MINERAL OWNERS AND LOUISIANA'S "FORCED POOLING" REGIME
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- The Court also held that even if "proceeds" as that terms is used in LSA R.S. 30:10(A)(3), means "gross proceeds" (which the Court did not decide), the statute still had to be read in harmony with the quasi-contractual provisions of the Civil Code which would not relieve the unleased mineral owner of other obligations that can be applied against the amount received.
- The Court noted that there is no dispute that operators are authorized to withhold severance taxes from the payment of "proceeds" to unleased mineral owners.
- As such, "…the Court can find no plausible explanation why severance taxes can be deducted from 'proceeds,' but post-production costs cannot." *Johnson v. Chesapeake Louisiana, LP*, No. CV 16-1543, 2022 WL 989341, at *7 (W.D. La. Mar. 31, 2022)
- The Court commented that when dealing with unleased mineral owners, "it must look to the nature of the specific protection claimed and finds that to disallow the deduction of post-production costs from UMOs would lead to 'free-riding." *Id.*
- Thus, "in accordance with the doctrine of *negotiorum gestio*, operators such as Chesapeake, may recover post-production costs from UMOs." *Id.*

UNLEASED MINERAL OWNERS AND LOUISIANA'S "FORCED POOLING" REGIME

DOW CONSTR., LLC V. BPX OPERATING CO., 564 F. SUPP. 3D 479 (W.D. LA. 2021), *RECONSIDERATION DENIED*, NO. CV 20-9, 2022 WL 1433013 (W.D. LA. MAY 5, 2022), AND *MOTION TO CERTIFY APPEAL GRANTED*, NO. CV 20-9, 2022 WL 1575850 (W.D. LA. MAY 17, 2022), AND *MOTION TO CERTIFY APPEAL GRANTED*, NO. CV 20-9, 2022 WL 1575850 (W.D. LA. MAY 17, 2022);
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  - Through an assignment of rights, Dow became the lessee of an oil and gas lease.
  - BPX later became the operator of a unit well. Dow and BPX have no written agreement between them; however, BPX sells Dow's share of the production from the unit well and pays Dow its share of the proceeds.
  - BPX moved for partial dismissal, arguing that La. Rev. Stat. § 30:10(A)(3) is inapplicable to the facts of the case because it only applies to interest owners who have no lease at all (i.e., completely unleased).
  - The issue before the court was whether La. Rev. Stat. § 30:10(A)(3) applies to lessees, like Dow, who have no lease with the operator.
  - In a memorandum ruling by the Western District of Louisiana, the court denied BPX's partial motion to dismiss finding that La. Rev. Stat. § 30:10(A)(3) applies to any mineral interest owner in a forced pool unit who has no lease with the operator. Thus, the court interpreted "unleased interests" as used in La. Rev. Stat. § 30:10(A)(3) as meaning "interests unleased by the operators."

UNLEASED MINERAL OWNERS AND LOUISIANA'S "FORCED POOLING" REGIME

DOW CONSTR., LLC V. BPX OPERATING CO., 564 F. SUPP. 3D 479 (W.D. LA. 2021), *RECONSIDERATION DENIED*, NO. CV 20-9, 2022 WL 1433013 (W.D. LA. MAY 5, 2022), AND *MOTION TO CERTIFY APPEAL GRANTED*, NO. CV 20-9, 2022 WL 1575850 (W.D. LA. MAY 17, 2022), AND *MOTION TO CERTIFY APPEAL GRANTED*, NO. CV 20-9, 2022 WL 1575850 (W.D. LA. MAY 17, 2022);
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  - The Court's reasoning was based on the plain language of the statute and examined the context of La. Rev. Stat. § 30:10(A)(3) in order to determine the meaning of "unleased interests" as used in that section.
  - The Court noted that Section 10 uses the terms "unleased interests" twice.
    - The first use excluded a completely unleased interest owner from being subject to the risk charge provisions and the term "unleased interests" in that context is clarified by the phrase "not subject to any oil, gas and mineral lease."
    - La. Rev. Stat. § 30:10(A)(3) contains the second reference to "unleased interests" but the legislature did not use any clarifying language. Instead, La. Rev. Stat. § 30:10(A)(3) contains the following language: "unleased interests for which the party or parties entitled to market production therefrom have not made any arrangements to separately dispose of the share of such production attributable to such tract . . . ." The court found that the descriptive phrase "for which the party or parties entitled to market production therefrom," appended to "unleased interests," clarified the term's meaning in this context finding that the only purpose this phrase serves is to include any party who has or has acquired the right to market production of an interest unleased by the operator.

UNLEASED MINERAL OWNERS AND LOUISIANA'S "FORCED POOLING" REGIME

DOW CONSTR., LLC V. BPX OPERATING CO., 564 F. SUPP. 3D 479 (W.D. LA. 2021), *RECONSIDERATION DENIED*, NO. CV 20-9, 2022 WL 1433013 (W.D. LA. MAY 5, 2022), AND *MOTION TO CERTIFY APPEAL GRANTED*, NO. CV 20-9, 2022 WL 1575850 (W.D. LA. MAY 17, 2022), AND *MOTION TO CERTIFY APPEAL GRANTED*, NO. CV 20-9, 2022 WL 1575850 (W.D. LA. MAY 17, 2022);
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  - The court declined to adopt BPX's interpretation of the statute because it would create an "incomplete statutory scheme" "with a hole regarding the rights and obligations of the operator and lessee when the lessee does not take its production in kind and the operator proceeds with the sale of production." *Dow Constr., LLC*, 2021 WL 4492863 at *6.
  - Thus, the court held that the term "unleased interests" in La. Rev. Stat. § 30:10(A)(3) means "interests unleased by the operator" and determined that this interpretation was most consistent with the purpose of Section 10 which is to govern situations in which an operator and a mineral interest owner have not otherwise contracted as to their rights and obligations in a forced pool unit.

UNLEASED MINERAL OWNERS AND LOUISIANA'S "FORCED POOLING" REGIME

DOW CONSTR., LLC V. BPX OPERATING CO., 564 F. SUPP. 3D 479 (W.D. LA. 2021), *RECONSIDERATION DENIED*, NO. CV 20-9, 2022 WL 1433013 (W.D. LA. MAY 5, 2022), AND *MOTION TO CERTIFY APPEAL GRANTED*, NO. CV 20-9, 2022 WL 1575850 (W.D. LA. MAY 17, 2022), AND *MOTION TO CERTIFY APPEAL GRANTED*, NO. CV 20-9, 2022 WL 1575850 (W.D. LA. MAY 17, 2022);

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  - The parties disputed whether section 10 precludes operators from seeking reimbursement of post-production costs incurred by operators after they market an unleased owner's share of production. The Court had to decide whether post-production costs are properly deductible against lessees under section 10 or other principles of law.
  - BPX argues that the doctrine of *negotiorum gestio*—pursuant to Louisiana Civil Code article 2292, et seq.—allows for operators to recover post-production costs.
  - Dow counters that the only costs allowed to be deducted from its share are the costs specifically listed in section 10.
  - Relying on the analysis of Chief Judge Hicks in the *Johnson* case, the Court agreed that the doctrine of *negotiorum gestio* allows operators the mechanism and ability to recover post-production costs incurred by an operator to market the mineral interest owner's share of production.
  - The Court also recalled its earlier decision that section 10(A)(3) applies to any interest owner who is unleased to the operator. Noting that, "[l]essees have voluntarily entered into a contractual relationship whereby they are typically required to market the production. There simply would be no incentive for an interest owner to ever take in kind if the alternate option was a free ride after production. Such an absurd result could not have been the intent of the Legislature."

UNLEASED MINERAL OWNERS AND LOUISIANA'S "FORCED POOLING" REGIME LOUISIANA REVISED STATUTES §§ 30:103.1 AND 30:103.2

UNLEASED MINERAL OWNERS DEMAND FOR ACCOUNTING UNDER LOUISIANA REVISED STATUTES §§ 30:103.1 AND 30:103.2 OPERATOR'S DUTY TO REPORT

- Louisiana Revised Statutes Sections 30:103.1 and 103.2, commonly known as the "Well Cost Reporting Statute," provides a vehicle for a non-operating lessee or an unleased mineral owner in a compulsory unit to obtain information from the operator about the well costs, operating expenses, and revenue of a unit well.
- "Sections 103.1 and 103.2 help remedy the information asymmetry by creating an enforceable mechanism for nonoperators that have unleased interests in the minerals to obtain an accounting of what the operator is doing." *Dow Constr., LLC v. BPX Operating Co.,* No. CV 20-9, 2022 WL 1447595 (W.D. La. May 6, 2022), *motion to certify appeal granted,* No. CV 20-9, 2022 WL 1575850 (W.D. La. May 17, 2022)

UNLEASED MINERAL OWNERS
DEMAND FOR ACCOUNTING UNDER
LOUISIANA REVISED STATUTES §§ 30:103.1 AND 30:103.2
OPERATOR'S DUTY TO REPORT

- La. R.S. 30:103.1(A) provides: "[w]henever there is included within a drilling unit, as authorized by the commissioner of conservation, and producing oil or gas, or both, upon which the operator or producer has no valid oil, gas, or mineral lease, said operator or producer shall issue the following reports to the owners of said interests by a sworn, detailed, itemized statement…
  - The Statute requires the operator to provide an "initial report" and "quarterly reports"
  - The reports must be in writing, sent via certified mail and be sworn, detailed and itemized.

UNLEASED MINERAL OWNERS
DEMAND FOR ACCOUNTING UNDER
LOUISIANA REVISED STATUTES §§ 30:103.1 AND 30:103.2
OPERATOR'S DUTY TO REPORT

- Contents of report:
  - The initial report must include the "costs of drilling, completing, and equipping the unit well."
  - The quarterly report is a little more involved and shall contain the following:

    (a) The total amount of oil, gas, or other hydrocarbons produced from the unit well during the previous quarter;

    (b) The price received from any purchaser of unit production;

    (c) Quarterly operating costs and expenses; and

    (d) Any additional expenses incurred to enhance or restore production of the unit well.

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- Requirement that reports be by "sworn, detailed, itemized statement"
  - Operators can use affidavits to "swear" that the contents of the report are true and correct.
  - One case has discussed what "detailed" means - *Brannon Properties, LLC v. Chesapeake Operating, Inc.* 514 F.App'x 459 (5th Cir. 2013).
    - Brannon was an unleased mineral owner with property included in a unit operated by Chesapeake. Brannon requested a report pursuant to LSA RS 30:103.1 Chesapeake timely provided a report consisting of 18 pages of itemized entries. Each entry gave the date and amount of the expenditure and whether it was classified as "Intangible Drilling and Completion" or "Tangible Drilling and Completion."
    - The district court initially found that the statement was not "detailed enough" but ultimately found that it was "detailed enough, because the purpose of the statute is that you alert these non-participants as to how much it has cost and how long before you begin drawing your check."
    - On appeal, the U.S. Fifth Circuit reversed the district court and held that the statute was unambiguous. The Court noted that the "the statute clearly connects the costs reported to the benefits received in exchange," and that "the 'detailed' requirement, therefore, must mean that the report has to related the cost to the benefit: it must tell the unleased mineral owner what it is getting for its money." The reports provided by Chesapeake did not satisfy the plain meaning of "detail."
    - In reaching this conclusion, the Court examined certain quarterly reports in the record which additionally included the vendor name, invoice number and a description of the service or parts provided.
    - The Court went on to note that "the itemization requirement strongly suggests that the Louisiana legislature intended the statute to do more than simply notify the unleased mineral owner of the drilling costs."

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- Timing of reports:
  - An operator has 90 days to send the report (initial and/or quarterly depending on timing of request) from the latter of (a) the completion of the well; or (b) receipt of the written request from the unleased owner.
  - Once quarterly reports are requested, the operator "shall continue sending quarterly reports until cessation of production." La. R.S. 30:103.1(C)
  - In an unreported decision, *Adams v. Chesapeake Operating, Inc.*, 561 Fed.Appx. 322 (2014), the Court held that "an operator or producer's duty under Section 30:103.1 is not triggered until a written request is sent by certified mail." The Court noted that Subsection A directed that an operator or producer "shall issue" an initial report but that Subsection C limits that duty to situations where the unleased mineral interest owner has sent a written request. And that for the penalty section in Section 103.2 to be imposed, another written notice would be required.

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- Standing to request and receive reports:
  - La. R.S. 30:103.1(A) identifies the category of owners entitled to reports as the "owner of land producing oil or gas, or both, upon which the operator has no valid oil, gas, or mineral lease."
  - Clearly, the unleased mineral owner has standing to request and receive reports under this category
  - What about non-operating or non-participating working interest owners? Yes.
    - The Louisiana Third Circuit Court of Appeal concluded that a lessee was entitled to an accounting pursuant to section 103.1 despite the phrase "owner or owners of unleased oil and gas interests" in the related forfeiture provision in section 103.2. *XXI Oil & Gas, LLC v. Hilcorp Energy Co.*, 2016-269 (La. App. 3 Cir. 9/28/16), 206 So. 3d 885, 888, writ denied, 2016-02181 (La. 3/24/17), 216 So. 3d 814.
    - In *TDX*, the United States Fifth Circuit Court of Appeals adopted the Louisiana Third Circuit's conclusion in XXI and reasoned that unleased interests in this context meant unleased as to the operator because of the following clarifying language in section 103.1: "lands producing oil or gas, or both, upon which the operator or producer has no valid oil, gas, or mineral lease." 857 F.3d at 259–62 (emphasis in original) (quoting La. R.S. § 103.1(A)). The Fifth Circuit interpreted the two statutes together and determined that the only reasonable interpretation was that "owner or owners of unleased oil and gas interests" meant "interests unleased by the operator." Id. Additionally, the Fifth Circuit looked to the purpose of the statute and found that there was no reason to differentiate between a lessee and a completely unleased owner when it came to who was entitled to receive an accounting from the operator. Id. at 262–63. As explained by the court, an "operator must send reports when the operator has no lease, not when there is no lease at all. 857 F.3d at 261.

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- Timing of reports and forfeiture:
  - If the operator fails to send the requested reports timely, the operator is at risk of the penalty set forth in La. R.S. 30:103.2.
  - "Section 103.2 adds teeth to [section] 103.1; it disincentivizes operators' failure to comply with [section] 103.1's reporting requirements." *B.A. Kelly Land Company v. Aethon Energy Operating, L.L.C.*, 25 F.4th 369, 376 (5th Cir. 2022)
  - Under La. R.S. 30:103.2, the delinquent operator does not risk the penalty unless (a) the unleased owner sends the operator a second writing, via certified mail, notifying the operator that it has failed to supply the requisite reporting; and (b) the operator does not send that reporting within 30 days of the receipt of that second written notice.
  - However, when an operator fails to timely provide the information in La. R.S. 10:103.1, such operator loses the "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."
  - What recoupment rights are forfeited was recently discussed in the *Dow* case which we will discuss later.

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- Is the request sufficient?
  - La. R.S. 30:103.1(C) states that reports are to be sent to "each owner of an unleased oil or gas interest who has requested such reports in writing, by certified mail addressed the operator" and further provides that such requests "shall contain the unleased interest owner's name and address."
  - However, we have had a series of recent decisions attempting to give substance to the requirements for a valid request under La. R.S. 30:103.1 and 103.2.
    - *Miller v. J-W Operating Co.*, 2017 WL 3261113 (W.D. La. July 28, 2017)
    - *Limekiln Dev., Inc. v. XTO Energy Inc.*, No. 1:20-CV-00145, 2021 WL 956079 (W.D. La. Feb. 5, 2021), *report and recommendation adopted*, No. 1:20-CV-00145, 2021 WL 950909 (W.D. La. Mar. 12, 2021)
    - *B.A. Kelly Land Company v. Aethon Energy Operating, L.L.C.*, 25 F.4th 369, 373 (5th Cir. 2022)

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- *Miller v. J-W Operating Co.*, 2017 WL 3261113 (W.D. La. July 28, 2017)
  - The operator received a demand letter which identified Miller as an unleased owner of land in Bossier Parish, and then stated: "I believe that JW – Operating Company is the operator of producing wells to which I own an interest in Bossier Parish, Louisiana. As an unleased mineral owner, and pursuant to LA. R.S. 30:103.1, and LA R.S. 30:10 I am formally requesting" the reports required by statute. Other than the name of the parish she did not identify the property she owned or the drilling unit she believed it to be in.
  - In response, J-W asked Miller for more information about what interests she claimed to own but Miller simply responded that she hoped J-W would be able to provide that information to her.
  - Miller then performed a title search and sent her ownership information to J-W. Upon receipt of that information J-W sent reports and a check for production.
  - However, Miller then sued J-W for allegedly not timely reporting under La. R.S. 30:103.1, relying upon her first letter as her 103.1 request. Part of her claim, was that the operator must undertake a title search for anyone claiming to be an unleased owner under La. R.S. 30:103.1.

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- *Miller v. J-W Operating Co.,* 2017 WL 3261113 (W.D. La. July 28, 2017)
  - The court noted that Miller "did not identify the land she owned, the drilling unit where the land was located, or the well that Defendant was operating," and that "Plaintiff is in a much better position than Defendant to know land she owns."
  - The Court also rejected Plaintiff's proposed rule – that an operator must undertake a title search for anyone claiming to be an unleased owner – as one that would lead to absurd results.
  - The Court also noted that "[t]he purpose of the statute is to trigger the reporting requirements once an operator is on notice of an unleased owner's claim. Without any information about what interest the unleased owner claims, the operator cannot fairly to be said to be on notice.
  - Since it was "Plaintiff's duty to know what land she owned, not Defendant's to find out for her," the Court found that the Plaintiff's letters were insufficient as a matter of law to trigger the reporting requirements La. R.S. 30:103.1 and the penalty provision of La. R.S. 30:103.2.

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- *Limekiln Dev., Inc. v. XTO Energy Inc.*, No. 1:20-CV-00145, 2021 WL 956079 (W.D. La. Feb. 5, 2021), *report and recommendation adopted*, No. 1:20-CV-00145, 2021 WL 950909 (W.D. La. Mar. 12, 2021)
  - Limekiln is an unleased mineral owner attempting to invoke the reporting requirements under La. R.S. 30:103.1.
  - Limekiln sent a request by certified mail stating "[p]ursuant to La. R.S. 30:103.1, we request reports and statements associated with the above referenced well operated by XTO Energy, Inc." Limekiln referenced the Unit Well, specifically "Powell 15, Well #243639, S15, T10N, R10W, Natchitoches Parish, LA OWNER Limekiln Development, Inc." Limekiln requested reports and statements under La. R.S. 30:103.1 regarding the specific Unit Well and certified Limekiln's name, address, and taxpayer identification number.
  - After some reporting by XTO and additional correspondence, Limekiln sent another letter via certified mail asserting XTO's failure to comply with the requirement under La. R.S. 30:103.1 to provide sworn, detailed, and itemized statements, and noting the Section 103.2 forfeiture penalties for such failure. Limekiln also identified itself as the unleased mineral owner of the Unit Well.

UNLEASED MINERAL OWNERS DEMAND FOR ACCOUNTING UNDER LOUISIANA REVISED STATUTES §§ 30:103.1 AND 30:103.2 OPERATOR'S DUTY TO REPORT

- *Limekiln Dev., Inc. v. XTO Energy Inc.*, No. 1:20-CV-00145, 2021 WL 956079 (W.D. La. Feb. 5, 2021), *report and recommendation adopted*, No. 1:20-CV-00145, 2021 WL 950909 (W.D. La. Mar. 12, 2021),
  - The parties disputed whether the unleased owner is required to include a property description in the required notices.
  - The parties also disputed whether the default notice must allege more than just a failure to comply with the reporting under 103.1.
  - The Court reviewed the plain language of the statute:

    > The plain language of the statute requires an unleased owner who requests well cost reporting to make such request "in writing, by certified mail addressed to the operator or producer." La. R.S. 30:103.1(C). "The written request shall contain the unleased interest owner's name and address." *Id.* The statute contains no other requirements on the unleased owner for the request. Section 103.2 provides that a default notice from owner or owners of unleased oil and gas interest must be "written notice by certified mail" which "call[s] attention to [the operator's] failure to comply with the provisions of R.S. 30:103.1." La. R.S. 30:103.2.

  - The Court noted that Limekiln's factual allegations establish that it strictly complied with Section 103.1's statutory requirements *and* identified the drilling unit its property was in. Also, Limekiln's Section 103.2 notice via certified mail specifically notified XTO that it failed to send Limekiln "the necessary, sworn, detailed, and itemized statements as required by La. R.S. 30:103.1" and of the Section 103.2 forfeiture penalties for such failure. Limekiln also identified itself as the unleased mineral owner of the Unit Well.
  - Thus, on a motion to dismiss, the Court held that Limekiln's pleaded factual allegations were sufficient to assert recovery against XTO for forfeiture under La. R.S. 30:103.2.

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- *B.A. Kelly Land Company v. Aethon Energy Operating, L.L.C.*, 25 F.4th 369, 373 (5th Cir. 2022)
  - Plaintiff is the owner of a 160-acre tract of land in Bossier Parish, Louisiana that is included within two compulsory oil and gas drilling and production units established by the Louisiana Commissioner of Conservation. Kelly's tract is unleased.
  - Defendant Aethon was the designated operator of the units which include sixteen producing wells.
  - On December 15, 2017, Kelly sent a letter by certified mail to Aethon stating that it was the owner of the unleased Tract within the Units (the "First Letter"). The First Letter stated that on November 15, 2013, Kelly had sent a certified mail letter to a prior, unnamed operator of the Units requesting reports concerning the "costs and production" for the Units' wells but received no response and requested that Aethon provide categories of information pertaining to the operation of the Units.
  - On April 17, 2018, Kelly sent a second letter to Aethon by certified mail (the "Second Letter") which referenced the First Letter and called to Aethon's attentions its "failure … to comply with Louisiana law" by failing to provide the reports concerning the "ongoing operating costs and expenses for the Unit."

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- *B.A. Kelly Land Company v. Aethon Energy Operating, L.L.C.*, 25 F.4th 369, 373 (5th Cir. 2022)
  - The Court found that Kelly's First Letter to Aethon satisfied the express requirements of La. R.S. 30:103.1 because it was

    (1) in writing;

    (2) sent by certified mail addressed to Aethon; and

    (3) contained the name and address of Kelly, the unleased owner.
  - In addition to complying with the statute's express requirements, the First Letter was sufficiently clear to give Aethon, as operator of the Units, notice that Kelly, an unleased owner, was requesting reports pursuant to La. R.S. 30:103.1.
  - The Court found significant that the First Letter expressly (1) stated that Kelly was an unleased owner; (2) correctly named the Units operated by Aethon and identified the location of the Tract; and (3) listed the names and serial numbers of the 16 wells operated by Aethon in the Units.
  - Further, the Court found significant that the First Letter requested four types of information concerning the Units which "matched almost verbatim" the categories of information that § 103.1 requires an operator's quarterly reports to an unleased owner to contain. Finally, the First Letter also referenced an earlier request to the operator who preceded Aethon for "sworn, detailed, itemized statements" which the Court found to be a "clear reference" to the format required of reports under La. R.S.103.1.

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- *B.A. Kelly Land Company v. Aethon Energy Operating, L.L.C.*, 25 F.4th 369, 373 (5th Cir. 2022)
  - The Court also held that the Second Letter called to Aethon's attention that Aethon had failed to comply with the provisions of La. R.S. 30:103.1.
  - The Court found significant that the Second Letter specifically noted that Kelly had previously sent Aethon the First Letter and mentioned reports of "operating costs and expenses for … the unit wells" which closely mirrored La. R.S. 30:103.1's requirement that operators provide unleased owners with "[q]uarterly operating costs and expenses" for the unit wells. The Court also noted that the Second Letter (1) recited much of the language of La. R.S. 30:103.2; (2) expressly called to Aethon's attention the company's failure to comply with Louisiana law; (3) referenced the types of information that must be contained in reports owed under La. R.S. 30:103.1; and (4) explicitly stated that the reports are to be made "by sworn, detailed, itemized statements."
  - The Court ruled, "On these facts, we conclude that [the Second Letter] fairly 'call[ed] attention' to Aethon's 'failure to comply with the provisions of R.S. 30:103.1.'"

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- *B.A. Kelly Land Company v. Aethon Energy Operating, L.L.C.*, 25 F.4th 369, 373 (5th Cir. 2022)
  - Upon receiving Kelly's notice of default (the Second Letter), Aethon had thirty (30) days to cure its default or else forfeit its right to demand contribution from Kelly for the cost of drilling operations of the wells.
  - A landman from Aethon called Kelly after receipt of the Second Letter for clarification, but this was not a sufficient response by Aethon.
  - "An operator like Aethon cannot shirk its duty without incurring the consequences the legislature has prescribed to protect the owners of unleased mineral interests. "Section 103.1 and its penalty provision, 103.2, are clear, precise and mandatory." Rivers v. Sun Oil Co., 503 So. 2d 1036 (La. Ct. App.), writ
  - The Court noted that the later reports provided by Aethon to Kelly did not cure Aethon's default because they were not sent until well after the thirty (30) day period provided by La. R.S. 30:103.2 had expired.

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- La. R.S. 30:103.2 provides that:

  > 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.

- Important to the discussion of what exactly is forfeited under La. R.S. 103.2 is that the operator "shall forfeit his right to demand contribution…for the costs of the drilling operations of the well."
- What is encompassed in "costs of the drilling operations of the well"?
- How long does the operator "forfeit" its "right to demand contribution"?
- What prescriptive period applies to a claim for "forfeiture"?

UNLEASED MINERAL OWNERS DEMAND FOR ACCOUNTING UNDER LOUISIANA REVISED STATUTES §§ 30:103.1 AND 30:103.2 OPERATOR'S DUTY TO REPORT

- *XXI Oil and Gas, LLC v. Hilcorp Energy Co.*, 2016-269 (La. App. 3 Cir. 9/28/16), 206 So. 3d 885, *writ denied*, 2016-02181 (La. 3/24/17), 216 So. 3d 814
  - Hilcorp recompleted the unit well which began producing in January 2011.
  - XXI acquired mineral leases over lands located in the drilling unit in February 2011.
  - XXI filed suit against Hilcorp in September 2011 for its failure to provide XXI with sworn, detailed and itemized statement of costs as required by La. R.S. 30:103.1
  - In a prior decision, the Court held that when an owner or operator drills a well, and that owner has no valid oil, gas or mineral lease on a portion of that land, the mineral lessee of those portions not leased by the operator of producer of the well has a claim to demand an accounting pursuant to La. R.S. 30:103.1
  - In this decision, the Court was asked to decide what costs were associated with "drilling operations of the well."
  - The Court reviewed the amendments to the statute and determined that:

    "[w]hen reading the two statutes in conjunction with one another it is obvious that costs of drilling operations includes the costs of "drilling, completing, and equipping the unit well." La.R.S. 30:103.1(A)(1). In amending both statutes, the legislature was aware that the penalty provision contained the term "costs of the drilling operations of the well." There was no need to further define it when it had already done so in La.R.S. 30:103.1(A)(1). Clearly "drilling operations" contemplate both drilling and operational aspects of taking and producing oil and gas from land. Otherwise, there would be no incentive for the operator or producer to provide the quarterly reports." XXI Oil & Gas, LLC v. Hilcorp Energy Co., 2016-269 (La. App. 3 Cir. 9/28/16), 206 So. 3d 885, 890, writ denied, 2016-02181 (La. 3/24/17), 216 So. 3d 814.

  - The Court further held that the penalty for "costs of the drilling operations" includes both pre-production and post-production costs.

UNLEASED MINERAL OWNERS DEMAND FOR ACCOUNTING UNDER LOUISIANA REVISED STATUTES §§ 30:103.1 AND 30:103.2 OPERATOR'S DUTY TO REPORT

- *Dow Constr., LLC v. BPX Operating Co.*, No. CV 20-9, 2022 WL 1447595 (W.D. La. May 6, 2022), *motion to certify appeal granted*, No. CV 20-9, 2022 WL 1575850 (W.D. La. May 17, 2022)
  - The Court also considered whether the phrase "costs of the drilling operations" includes post-production costs.
  - BPX claimed that the issue was res nova issue and attempted to distinguish *XXI Oil and Gas*.
  - Dow argued that that *XXI Oil & Gas* is directly on point and that post-production costs are included in the forfeiture provision. Dow also argued that it would be absurd to allow an operator to deduct post-production costs but then hide those costs from interest owners.
  - The Court first acknowledged that there was no reason to depart from *XXI Oil & Gas*'s reasoning that the phrase "cost of the drilling operations of the well" refers to the costs delineated in La. R.S. 30:103.1(A)(1) and (2).
  - However, the Court noted that the question remained whether operators are required to report post-production costs under La. R.S. 30:103.1.

UNLEASED MINERAL OWNERS DEMAND FOR ACCOUNTING UNDER LOUISIANA REVISED STATUTES §§ 30:103.1 AND 30:103.2 OPERATOR'S DUTY TO REPORT

- *Dow Constr., LLC v. BPX Operating Co.*, No. CV 20-9, 2022 WL 1447595 (W.D. La. May 6, 2022), *motion to certify appeal granted*, No. CV 20-9, 2022 WL 1575850 (W.D. La. May 17, 2022)
  - To answer this question, the Court looked at the plain language of the statute – primarily La. R.S. 30:103.1(A)(2)(d) and 30:103.1(D).
    - Section 103.1(A)(2)(d) contains a broad reporting requirement regarding "funds expended to enhance … production." The Court reasoned that "post-production" costs can reasonably by described as such since those funds are incurred to "improve" the "value, quality, desirability, or attractiveness" of "worthless" production.
    - Also, section 103.1(D) provides that:
      - Notwithstanding any other provision of this Section to the contrary, at the time a report is due pursuant to this Section, if the share of the total costs of drilling, completing, and equipping the unit well and *all other unit costs* allocable to an owner of an unleased interest is less than one thousand dollars, no report shall be required. However, during January of the next calendar year, the operator or producer shall report such costs to the owner. La. R.S. § 30:103.1(D) (emphasis added).
    - The Court held that post-production costs are included in the phrase "all other" costs and the logical interpretation of section 103.1(A)(2) is that post-production costs must be detailed and itemized in the quarterly reports. Therefore, post-production costs are incorporated into the forfeiture provision.
    - The Court also pointed out that the resolution of the issue was consistent with the purpose of the statute. "The purpose of the reporting requirement would be substantially defeated if operators could deduct post-production costs without any reporting oversight, as owners would not have a full "accounting of what the operator is doing."

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- Both *Brannon* and *XXI Oil and Gas*, held that the owners would not need to contribute to the costs of drilling operations for the period covered by deficient or failed reporting.
- The Court in *XXI Oil and Gas* expanded this understanding by declaring that "[o]nce the operator or producer complies with the statutory requirement, it would no longer be penalized and could start deducting for the cost."
- In yet another Dow decision, *Dow Constr., LLC v. BPX Operating Co.*, 603 F. Supp. 3d 442 (W.D. La. 2022), the Court additionally held that the "forfeiture provision entitles the unleased owner to 100 percent of the revenue allocable to its tract without deductions for expenses during the period of faulty reporting."

UNLEASED MINERAL OWNERS DEMAND FOR ACCOUNTING UNDER LOUISIANA REVISED STATUTES §§ 30:103.1 AND 30:103.2 OPERATOR'S DUTY TO REPORT

- *Dow Constr., LLC v. BPX Operating Co.*, 603 F. Supp. 3d 442, 446–47 (W.D. La. 2022)
  - This Dow decision also examined which prescriptive period would be applicable to a "forfeiture claim."
  - BPX argued for the one-year prescriptive period contending that in Louisiana, statutory penalties are delictual in nature.
  - Dow argued that not all penalties are delictual and that a cause of action under the forfeiture statute "is a personal action based on BPX's breach of the obligations in the quasi-contract established by the legislature," and as such, the applicable prescriptive period is ten years.
  - "'To determine whether a cause of action is tort or contract, Louisiana courts look to the nature of the underlying duty.' *Richard*, 559 F.3d at 345 (citation omitted). Here, the underlying duty is to provide an accounting of information to a mineral interest owner who has no contractual relationship with the operator. The nature of the duty derives from the Louisiana forced pooling statutory regime. *Dow Constr., LLC v. BPX Operating Co.,* 603 F. Supp. 3d 442, 447 (W.D. La. 2022)

- *Dow Constr., LLC v. BPX Operating Co.*, 603 F. Supp. 3d 442, 446–47 (W.D. La. 2022)
  - The Court viewed the duty to provide an accounting as "an additional term to what the Louisiana Supreme Court has described as a quasi-contractual relationship and is an outgrowth of the operator's duties as a *negotiorum gestor* when it develops and operates the land for the benefit of the mineral interest owners with whom the operator has no contractual relationship. Id.
  - "Where, as here, unitization is governmentally instituted, nonoperators, like [Dow], lack access to the data showing the well production and costs in the unit in which they share." *Id.* (internal quotation marks and citation omitted). "It follows, but for the existence of the [quasi-contract] between [Dow] and [BPX], there would be no claim" for accounting and, by extension, forfeiture. *Smith*, 285 So. 3d at 1071 (citation omitted). Because any failure to comply with the reporting requirements in section 103.1 is a breach of a quasi-contractual duty, "it necessarily follows the [forfeiture] cause of action is personal and subject to the ten-year prescriptive period found in La. Civ. Code art. 3499." *Id*
  - A claim for forfeiture is in essence a claim for an owner's share of production without the deduction of costs. *See XXI Oil & Gas*, 206 So. 3d at 888 (using stipulated revenue to calculate forfeiture under section 103.2). As the Louisiana Supreme Court has held, a claim for production under the forced pooling regime is subject to a ten-year prescriptive period. *Wells*, 89 So. 3d at 1149; *Taylor*, 619 So. 2d at 886–88. Therefore, it logically flows that a forfeiture claim is subject to the same ten-year prescriptive period. Because Dow filed its claim within the ten-year prescriptive period, BPX's prescription defense must be rejected. Id.

UNLEASED MINERAL OWNERS AND SUBSURFACE TRESPASS

UNLEASED MINERAL OWNERS AND SUBSURFACE TRESPASS

- In *Hunter Co., Inc. v. McHugh*, 11 So. 2d 495 (La. 1942), the Louisiana Supreme Court held that the Commissioner of Conservation's power to establish drilling units is a constitutional exercise of the State's police power.
- Once the Commissioner has established a unit, before a well or test well may be drilled in search of minerals, a permit must be obtained from the Commissioner. La. Rev. Stat. § 30:28(A). The issuance of this permit is "sufficient authorization to the holder of the permit to enter upon the property covered by the permit and to drill in search of minerals thereon." Id. at (F). No other agency or political subdivision of the state has the authority, and are expressly forbidden, to prohibit or in any way interfere with the drilling of a well or test well in search of minerals by the holder of such a permit. Id.

UNLEASED MINERAL OWNERS AND SUBSURFACE TRESPASS

- As a general rule, absent voluntary unitization or contract, an operator cannot utilize a landowner's property, either surface or subsurface, to explore for and produce minerals from other tracts. However, the framework changes when an unleased tract is included in a unit validly created by order of the Commissioner of Conservation.
- The question arises whether the existence of a forced pooled unit validly created by the Commissioner can provide the unit operator with authority to utilize the surface and subsurface of tracts within the unit not otherwise existing under contracts between the unit operator and the owners of the lands upon which the operations are conducted.

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- *Nunez v. Wainoco*, 488 So.2d 955 (La. 1986)
  - The Supreme Court was faced with the situation where a unit operator drilled a unit well at a surface location on a tract on which the unit operator enjoyed full mineral leasehold rights. However, the well inadvertently deviated and drifted under an adjoining tract owned by Nunez on which the unit operator had no mineral lease or any other agreement.
  - Nunez sued for an injunction seeking to cause the unit operator to remove the wellbore from underneath his property.
  - The Louisiana Supreme Court held that, in the context of the facts submitted, the authority of the Commissioner of Conservation superseded the private property rights of landowners within the unit and, as a result, the unit operator, by virtue of the Unit Order, was authorized to drill the well through or under Nunez's tract.

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- *Nunez v. Wainoco*, 488 So.2d 955 (La. 1986)
  - The Court held that,

    the more recent legislative enactments of Title 30 and Title 31 supersede in part La. Civ. Code Ann. art. 490's general concept of ownership of the subsurface by the surface owner of land. **Thus, when the Commissioner of Conservation has declared that landowners share a common interest in a reservoir of natural resources beneath their adjacent tracts, such common interest does not permit one participant to rely on a concept of individual ownership to thwart the common right to the resource as well as the important state interest in developing its resources fully and efficiently.** (Emphasis added)

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- *Diamond McCattle Co. v. Range La. Operating, LLC, 53,896 (La. App. 2 Cir. 4/14/21), 316 So. 3d 603, writ denied, 21-00681 (La. 9/27/21), 324 So. 3d 92*
  - Plaintiffs were unleased mineral owners who claimed a subsurface trespass by Range. They alleged that Range Louisiana Operating ("Range") "intentionally and in bad faith" drilled a horizontal well (the "Well") under their property, which was not under lease to Range.
  - Range completed a horizontal well under the Plaintiffs' property within a unitized formation for which Range was the designated operator; however, the well was only permitted as a lease-based (rather than unit-based) well at the time of its completion. The well was subsequently re-permitted as a unit well.
  - Range's defense when suit was eventually filed was that the Well was a unit well for a compulsory unit which included plaintiffs' property.

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  - Range introduced evidence showing that its intent was always to drill the Well as a unit well for the LCV units, rather than as a lease well for the deeper un-unitized L-Gray Sand.
  - Range also introduced expert affidavits which stated that it is a common practice in the Office of Conservation:
    - To permit a well to a deeper non-unitized formation although the operator's main objective is to test a shallower, united formation; and
    - For cross-unit wells to be first designated as lease wells to accommodate the operator's need to drill before a hearing can be held recognizing the well as a cross-unit well. He further stated that such a well is deemed a unit well from the date of first production, notwithstanding the initial lease designation.
  - Relying on Nunez, the district court held, and the Second Circuit affirmed, that the intent of the operator determines if an operation is a lease operation or a unit operation. Because Range had submitted uncontradicted evidence demonstrating that its intent was to drill a unit well, plaintiffs' claim failed.